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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 745

PREMIER-PABST SALES COMPANY, APPELLANT,

vs.

WALTER T. GROSSCUP, W. WORRELL WAGNER AND LEO A. CROSSEN, CONSTITUTING THE PENNSYLVANIA LIQUOR CONTROL BOARD, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED FEBRUARY 6, 1936.

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IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUNE SESSIONS, 1935

No. 8953

PREMIER-PABST SALES COMPANY, a Corporation of the State of Delaware, Complainant,

vs.

WALTER T. GROSSCUP, W. WORRELL WAGNER and LEO A. CROSSEN, Constituting the Pennsylvania Liquor Control Board; Charles F. Kelley, District Attorney of Philadelphia County, Pennsylvania; WillB. Hadley, County Treasurer of Philadelphia County, Pennsylvania; Charles J. Margiotti, Attorney General of the Commonwealth of Pennsylvania, and George H. Earle, 3d, Governor of the Commonwealth of Pennsylvania, Defendants

DOCKET ENTRIES

Aug. 9, 1935. Bill of Complaint and Petition for Declaratory Judgment, filed.
Aug. 9. 1935. Subpœna exit—returnable August 29, 1935.
Aug. 9, 1935. Motion for temporary restraining order and for preliminary injunction filed.
Aug. 9, 1935. Temporary restraining order filed.
Aug. 9, 1935. Bond sur restraining order in $500 with Standard Acc. Ins. Co., surety, and Decree approving bond, filed.
Aug. 9, 1935. Injunction affidavit of L. M. Arbogast filed.
Aug. 10, 1935. Motion for interlocutory injunction filed.
Aug. 12, 1935. Printed copy of bill of complaint filed.
Aug. 16, 1935. Duplicate original subpœna exit—returnable Sept. 5, 1935.

[fol. 4]

Aug. 16, 1935. Appearance of Graham C. Woodward, Esq., and J. Louis Breitinger, Esq., for WillB. Hadley, defendant, filed.
Aug. 19, 1935. Order of court extending temporary restraining order to August 29, 1935, filed.

DOCKET ENTRIES—Continued

Aug. 26, 1935. Subpœna with return of Marshal endorsed thereon, filed.

Aug. 27, 1935. Duplicate original subpœna returned on Aug. 21, served and filed.

Aug. 29, 1935. Decree renewing restraining order for 10 days, filed.

Sep. 4, 1935, Answer by Will B. Hadley, County Treasurer of Philadelphia County, filed.

Sep. 5, 1935. Appearance of C. J. Margiotti, Esq., Edw. Friedman, Esq., H. A. Segelbaum, Esq., and T. J. Guerin, Esq., for defendants, filed.

Sep. 5, 1935. Printed answer by Walter T. Grosscup, et al., filed.

Sep. 7, 1935. Order of Court extending temporary restraining order to Sept. 18, 1935, filed.

Sep. 11, 1935. Answer of Charles F. Kelley, Esq., etc., to Bill of Complaint, filed.

Sep. 18, 1935. Order of Court extending temporary restraining order to Sept. 28, 1935, filed.

Sep. 18, 1935. Injunction affidavits of L. M. Arbogast and H. Perlstein filed.

Sep. 23, 1935. Appearance of Grover C. Ladner, Esq., for certain defendants, filed.

Sep. 23, 1935. Argued sur motion for interlocutory injunction and for declaratory judgment.

Sep. 28, 1935. Order of Court extending temporary restraining order to Oct. 8, 1935, filed.

Oct. 8, 1935. Order of Court extending temporary restraining order to Oct. 18, 1935, filed.

Oct. 18, 1935. Order of Court extending temporary restraining order to Oct. 28, 1935, filed.

Oct. 22, 1935. Stipulation of counsel that hearing had should be considered as on application for permanent injunction, filed.

Oct. 22, 1935. Stipulation of Counsel for affirmance of findings of fact filed.

[fol. 5]

Oct. 22, 1935. Complainant's Requests for Conclusions of Law filed.

Oct. 28, 1935. Order of Court extending temporary restraining order to Nov. 7, 1935, filed.

DOCKET ENTRIES—Continued

Nov. 7, 1935. Order of Court extending temporary restraining order to Nov. 17, 1935, filed.

Nov. 16, 1935. Order of Court extending temporary restraining order to Nov. 27, 1935, filed.

Nov. 27, 1935. Order of Court extending temporary restraining order to Dec. 7, 1935, filed.

Dec. 7, 1935. Order of Court extending temporary restraining order to Dec. 17, 1935, filed.

Dec. 10, 1935. Opinion, Dickinson, J. (Thompson, C. J., and Kirkpatrick, J., concurring) dismissing bill for want of equity filed.

Dec. 10, 1935. Order of Court, re findings of fact and conclusions of law, filed.

Dec. 17, 1935. Decree extending temporary restraining order to Dec. 27, 1935, filed.

Dec. 27, 1935. Decree extending temporary restraining order to Jan. 6, 1936, filed.

Dec. 27, 1935. Plaintiff's motion for Injunction pending Appeal filed.

Jan. 6, 1936. Decree extending temporary restraining order to Jan. 16, 1936, filed.

Jan. 7, 1936. Final decree dismissing Bill of Complaint with costs filed.

Jan. 7, 1936. Petition for Appeal filed.

Jan. 7, 1936. Order of Court allowing Appeal filed.

Jan. 7, 1936. Assignments of Error and Prayer for Reversal filed.

Jan. 7, 1936. Order of Court granting injunction pending Appeal filed.

Jan. 7, 1936. Defendants' Objections to Granting Injunction pending Appeal filed.

Jan. 7, 1936. Statement as to Jurisdiction of Appeal filed.

Jan. 7, 1936. Bond for Costs sur Appeal in $250 with Standard Accident Ins. Co., Surety, and Decree approving bond filed.

[fols. 6-8]

Jan. 7, 1936. Supersedeas bond sur appeal in $2,000 with Standard Accident Ins. Co., Surety, and Decree approving bond filed.

Jan. 7, 1936. Citation allowed and issued.

Jan. 12, 1936. Notice as to opposing Statement of Jurisdiction and Acceptance of Service filed.

DOCKET ENTRIES—Continued

Jan. 12, 1936. Waiver of Opposing Statement of Jurisdiction filed.

Jan. 16, 1936. Defendants' Requests for Conclusions of Law filed.

Jan. 17, 1936. Citation returned, "service accepted" on behalf of Appellees by Grover C. Ladner, Esq., for Charles J. Margiotti, and filed.

Jan. 24, 1936. Præcipe for transcript of record filed.

[fol. 9] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, JUNE SESSIONS, 1935

No. 8953.

[Title omitted]

BILL OF COMPLAINT FOR INTERLOCUTORY INJUNCTION AND PETITION FOR DECLARATORY JUDGMENT—Filed Aug. 9, 1935

To the Honorable the Judges of said Court:

The complainant, Premier-Pabst Sales Company, complains and says:

1. That complainant is a corporation organized and ex-
[fol. 10] isting under the laws of the State of Delaware and, as such, it is duly registered under the laws of the Commonwealth of Pennsylvania, where it maintains a principal office and place of business at 1601 Chestnut Street, Philadelphia, Pennsylvania. Complainant is there engaged wholly in the business of selling, at wholesale, malt and brewed beverages imported into Pennsylvania from the states of Wisconsin and Illinois.

2. The complainant files this Bill on behalf of itself and all other corporations and persons similarly situated, for the purpose of obtaining equitable relief; to enjoin and restrain the threatened deprivation, under color of a certain Act of Assembly of the Commonwealth of Pennsylvania, of certain rights, privileges and immunities secured to complainant by the Constitution of the United States; to obtain a declaratory judgment of this Court of the validity

and constitutionality of the Act of Assembly of the Commonwealth of Pennsylvania of July 18, 1935, being Act No. 398, officially designated as the "Beverage License Law". The cause of action herein asserted by the complainant has arisen under the Constitution of the United States, and the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00.

3. The defendants, Walter T. Grosscup, W. Worrell Wagner and Leo A. Crossen, comprise the Liquor Control Board of the Commonwealth of Pennsylvania, are duly appointed and qualified as such, and are citizens of the Commonwealth of Pennsylvania, and reside in the County of Philadelphia. The defendant, Charles F. Kelly, is District Attorney of the County of Philadelphia, State of Pennsyl- [fol. 11] vania, and is a citizen of the Commonwealth of Pennsylvania, residing in the City of Philadelphia. The defendant, Will B. Hadley, is County Treasurer of the County of Philadelphia, State of Pennsylvania, and is a citizen of the Commonwealth of Pennsylvania, residing in the City of Philadelphia. The defendant, Charles J. Margiotti, is Attorney General of the Commonwealth of Pennsylvania, and is a citizen of the Commonwealth of Penncylvania, residing in the County of Jefferson. The defendant, George H. Earle, 3d, is the Governor of the Commonwealth of Pennsylvania, and is a citizen of the Commonwealth of Pennsylvania, residing in the County of Montgomery. The foregoing public officers, under the provisions of the Beverage License Law of 1935 aforesaid, are charged with the duty of the enforcement, operation and execution of the provisions thereof, and charged with the duty of enforcing the civil and criminal penalties as provided in said law.

4. The "Beverage License Law" of the Commonwealth of Pennsylvania became effective July 18, 1935. An unofficial copy of said Act is hereto attached, marked "Exhibit A", and made a part hereof. No official copy of said Act has at the time of the filing of this Bill been issued by the official printer of the Commonwealth of Pennsylvania.

5. The said Beverage License Law of the Commonwealth of Pennsylvania provides for the licensing of "manufacturers", "distributors", and "importing distributors" of malt and brewed beverages.

A manufacturer is defined in Section 2 (c) as follows:

"The word 'manufacturer' means and includes all persons holding licenses issued by the Board to engage in the [fol. 12] manufacture, bottling, transportation and sale of malt or brewed beverages."

A distributor is defined in Section 2 (d) as follows:

"The term 'distributor' means and includes all persons licensed by the Board to engage in the purchase only from Pennsylvania manufacturers and from importing distributors in the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturer, but not for consumption on the premises where sold and in quantities of not less than two hundred eight--eight fluid ounces."

An importing distributor is defined in Section 2 (e) as follows:

"The term 'importing distributor' means and includes persons licensed by the Board to engage in the purchase from manufacturers and other persons located outside this Commonwealth and from persons licensed as manufacturers and distributors under this Act in the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturer but not for consumption on the premises where sold and in quantities of not less than two hundred eighty-eight fluid ounces."

Importing distributors, under Section 19 of the said Act, are required to pay to the County Treasurer a license fee of $900.00. Distributors, under Section 19 of said Act, are required to pay to the county Treasurer a license fee of but $400.00.

Importing distributors, under Section 18 of said Act, are required to file a bond in the amount of $2,000.00. Distributors, under Section 18 of said Act, are required to file a bond of but $1,000.00.

[fol. 13] Section 22 (z) of said Act declares it to be unlawful and subject to the fines and penalties hereinafter described for an importing distributor to import and transport malt and brewed beverages contrary to the rules and regulations of the Liquor Control Board, which power to

promulgate rules and regulations is vested solely in said Board.

Section 29 provides for the following penalties: a fine of $300.00 for the first offense and imprisonment at the discretion of the Court; for the second offense, a fine of $500.00 and a mandatory sentence of imprisonment.

Section 5 provides that the officers and directors of corporations who are the holders of importing distributors' licenses shall be citizens of the United States and shall have been residents of this Commonwealth at least two years prior to the date of the application; that the owners of at least fifty-one per centum of the capital stock shall be citizens of the United States and shall have been, for a period of at least two years prior to the date of the application, residents of the Commonwealth.

Section 23 (e) provides that no importing distributor shall lend any moneys, credits, or equivalent thereof to any retailer, which, in substance, provides that all sales shall be on a cash basis.

Section 23 (g) and (h) provides that importing distributors shall not display advertising signs except signs which shall exceed a cost or value as in said Act provided.

Section 23 (p) provides that malt and brewed beverages imported into Pennsylvania for distribution therein shall not on the label thereof or on any advertisement or sign "refer in any manner to the alcoholic strength * * * or use * * * such words as 'full strength', 'extra strength', [fol. 14] 'high test', 'high proof', 'pre-war strength', or similar words or phrases".

6. The Complainant is a subsidiary corporation of and owned by the Premier-Pabst Corporation, a corporation of the State of Delaware, engaged in the manufacture of beer at Milwaukee, Wisconsin, and Peoria, Illinois. The officers and directors of the Premier-Pabst Sales Company are not residents of the State of Pennsylvania and, as hereinbefore recited, all of its outstanding capital stock is owned by the said parent corporation, Premier-Pabst Corporation. The Premier-Pabst Sales Company is duly registered under the laws of the State of Pennsylvania, and for many years last past has solicited orders from residents, inter alia, of the States of New Jersey, New York, Delaware, Maryland, Pennsylvania, and the District of Columbia. In pursuance and in fulfillment of said orders thus

secured by the complainant, there was shipped, either from the brewery of the Premier-Pabst Corporation at Milwaukee, Wisconsin, or Peoria, Illinois, malt and brewed beverages there manufactured, and delivered to the purchasers thereof at their respective places of business in the states aforesaid. That the complainant has built up and established a large and profitable trade in the sale and shipment of such products at wholesale, by and through one of its principal offices situate at 1601 Chestnut Street, Philadelphia; that said business amounts to a sum in excess of $500,000.00 annually. That said deliveries to its customers as aforesaid of the malt and brewed beverages, shipped in fulfillment of said orders obtained by complainant, are accomplished by the shipment f. o. b. at either Milwaukee, Wisconsin, or Peoria, Illinois, on railroad cars in interstate traffic for delivery to the purchasers in the state of [fol. 15] Pennsylvania and surrounding states, as before described. The complainant at this time is the holder of a valid subsisting beer wholesale distributor's license, issued by the state of Pennsylvania, being No. 925, authorizing the complainant to sell malt and brewed beverages at wholesale.

That the shipments from said originating points in Wisconsin and Illinois to purchasers other than those doing business in the State of Pennsylvania, and consigned to purchasers without the State of Pennsylvania are routed through and transported by railroad through the State of Pennsylvania to the ultimate destination in the states hereinbefore recited. By the provisions of the said Beverage License Law of 1935 (Section 23 z), the Pennsylvania Liquor Control Board is authorized to promulgate and enforce rules and regulations for such through shipments.

That under the terms of the said Beverage License Law of 1935, complainant is required to procure, as hereinbefore recited, a license as an importing distributor at the sum of $900.00 and to file a bond in the sum of $2,000.00, while distributors of malt and brewed beverages brewed solely in the Commonwealth of Pennsylvania are required to obtain a distributor's license only for which the license fee is but $400.00, and the license bond is but $1,000.00.

The complainant, the Premier-Pabst Sales Company, sold and shipped into the Commonwealth of Pennsylvania, during the past year, approximately 50,000 barrels of malt

and brewed beverages, approximating in value in excess of $500,000.00.

That your complainant is, under said Beverage License Law of 1935 of the Commonwealth of Pennsylvania, required to submit itself to such rules and regulations as may from time to time be promulgated by the Pennsylvania Liquor Control Board governing and restricting the im- [fol. 16] portation of malt beverages brewed other than in the State of Pennsylvania, which regulations, in order to effectuate the purpose and design of the aforesaid Act providing for a monopoly on behalf of Pennsylvania brewers and distributors in the sale and distribution in Pennsylvania of malt and brewed beverages, will be oppressive and discriminatory and contrary to the rights and interests of the complainant, in deprivation of its rights, and destructive of its trade, custom, and good will as a distributor of malted beverages in the Commonwealth of Pennsylvania.

Under the laws of the Commonwealth of Pennsylvania, the brewing of malt beverages is a lawful business and beer is recognized by the said law as a lawful commodity that may be made, bottled, and sold within the State of Pennsylvania, and is a proper and lawful subject of interstate commerce; that the right to manufacture, possess and sell malt and brewed beverages within the Commonwealth of Pennsylvania is limited and restricted only to the extent of the provisions of Pennsylvania law that are valid in limiting and restricting the manufacture, possession, and sale; that the importation of malt and brewed beverages into the Commonwealth of Pennsylvania from points without the State is lawful, and is restricted and limited only to the extent as provided in the valid provisions of the Pennsylvania law concerning the importation, sale, and possession of the malt and brewed beverages.

Under the provisions of the Liquor Control Law of the State of Pennsylvania, before the amendment as aforesaid known as the Beverage License Law, a person engaged in the business of a wholesale distributor of malt and brewed beverages, whether brewed in the State of Pennsylvania or brewed in other states and imported into the [fol. 17] State of Pennsylvania, was required to obtain only a distributor's license for a relatively nominal and uniform sum, whereas, under the provisions of the law

hereinabove recited, known as the Beverage License Law, unlawful, discriminatory, and prejudicial rules are enacted requiring the complainant herein to pay $900.00 for an importing distributor's license, and to file a bond of $2,000.00, while distributors at wholesale of malt and brewed beverages brewed within the State of Pennsylvania are required to file a bond of only $1,000.00 and to pay a license fee of only $400.00; that the right of the complainant to sell and deal in importing malt and brewed beverages is thereby discriminated against solely on the basis of origin without the Commonwealth of Pennsylvania, and as such, such provisions of the said Act are in violation of the provisions of the Constitution of the United States as hereinafter set forth.

7. Complainant is directly and oppressively affected by the said Act. The Pennsylvania Liquor Control Board has issued a regulation, dated July 25th, 1935, being Regulation No. 51, providing that it shall be unlawful for an importing distributor to engage in the business of importing malt and brewed beverages from without the Commonwealth of Pennsylvania for sale and distribution within the Commonwealth of Pennsylvania without first obtaining an importing distributor's license, as will more fully appear in said Regulation, a true and correct copy of which is attached hereto, marked "Exhibit B", and made a part hereof.

8. That on advice of counsel, complainant has not applied for or received an "Importing Distributor's License", as required by the said Act of Assembly and the regulation aforesaid.

[fol. 18] 9. That the Beverage License Law of the Commonwealth of Pennsylvania as aforesaid is unconstitutional, invalid, and in violation of the rights of the complainant, particularly the following provisions:

(A) "Section 19 (c). In the case of an importing distributor, the license fee shall be Nine Hundred Dollars ($900.) and shall be paid to the Board."

(B) "Section 18. The penal sum of bonds filed by distributors shall be One Thousand Dollars ($1,000.), and for importing distributors Two thousand Dollars ($2,000.)."

(C) "Section 5 (b). The Board shall issue to any reputable person who applies therefor, pays the license fee hereinafter prescribed and files the bond hereinafter required, a distributor's or importing distributor's license for the place which such person desires to maintain for the sale of malt or brewed beverages not for consumption on the premises where sold, in quantities of not less than two hundred eighty-eight fluid ounces and in original packages as prepared for the market by the manufacturer. Such licenses shall be issued only to reputable individuals, partnerships and associations, who are, or whose members are citizens of the United States and have for two years prior to the date of their application been residents of the Commonwealth of Pennsylvania; or to reputable corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania. Such licenses shall be issued to corporations duly organized or registered under the laws of the Commonwealth of Pennsylvania only when it appears that all of the officers and directors of the corporation are citizens of the United States and have been residents of the [fol. 19] Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, and that at least fifty-one per centum of the capital stock of such corporation is actually owned by individuals who are citizens of the United States and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application. Such license shall authorize the holder thereof to sell or deliver malt and brewed beverages in quantities of not less than two hundred eighty-eight fluid ounces anywhere within the Commonwealth of Pennsylvania, which in the case of distributors have been purchased only from persons licensed under this Act, and in the case of importing distributors have been purchased from manufacturers and persons outside the Commonwealth or from persons licensed under this Act."

(D) "Section 23. It shall be unlawful (p) for any licensee to issue, publish or post or cause to be issued, published or posted, any advertisement of a malt or brewed beverage, including a label which shall refer in any manner to the alcoholic strength of the malt or brewed beverages manufactured, sold or distributed by such licensees, or to use in any advertisement or label such words as 'full strength',

'extra strength', 'high test', 'high proof', 'pre-war strength', or similar words or phrases which would lead or induce a consumer to purchase a brand of malt or brewed beverage on the basis of its alcoholic content, or to use in or on any advertisement or label any numeral unless adequately explained in type of the same size, prominence and color, or for any licensee to purchase, transport, sell, or distribute any malt or brewed beverage advertised or labeled contrary to the provisions of this clause".

[fol. 20] (E) "Section 23. It shall be unlawful (z) for any person to transport or import any malt or brewed beverages into this Commonwealth except in accordance with the rules and regulations of the Board, or for any person to transport malt or brewed beverages into or within this Commonwealth unless there shall be affixed to the original containers in which such malt or brewed beverages are transported stamps or crowns evidencing the payment of the malt liquor tax to the Commonwealth; Provided, however, That this clause shall not be construed to prohibit transportation of malt or brewed beverages through this Commonwealth and not for delivery therein, if such transporting is done in accordance with the rules and regulations of the Board."

(F) "Section 23. It shall be unlawful (g) for any licensee, except a manufacturer on his own premises to advertise on the outside of any licensed premises, or on any lot of ground on which licensed premises are situate, or on any building of which the licensed premises are a part, any beverages by trade name, trade mark, or in any manner which would indicate the manufacturer, producer, or place of manufacture or production of any beverage unless the actual value of such advertising device shall be not more than seventy-five dollars ($75.00)."

(G) "Section 23. It shall be unlawful (h) for any manufacturer, importing distributor, or distributor, to give, furnish or sell, or for any other licensee to lease, purchase or receive for display, or to display on the inside of any licensed premises any advertising matter indicating the trademark or trade name of any particular beverage or the [fol. 21] manufacturer, producer or place of manufacture or production of any beverage unless the actual value of

such advertising device shall not exceed twenty-five dollars."

(H) "Section 23. It shall be unlawful (e) for any licensee to sell, or offer to sell, or receive any malt or brewed beverages except for cash, excepting credits extended by a Hotel or Club to bona fide registered guests or members. No right of action shall exist to collect any claims for credit extended contrary to the provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale or from refunding to any purchaser the amount paid by such purchaser for containers or as a deposit on containers when title is retained by the Vendor, if such containers or packages have been returned to the manufacturer, distributor, importing distributor, or other vendor. Nothing herein contained shall prohibit a manufacturer from extending usual and customary credit for malt or brewed beverages sold to customers or purchasers who live or maintain places of business outside of the Commonwealth of Pennsylvania when the beverages so sold are actually transported and delivered to points outside of the Commonwealth."

(I) "Section 29. Penalty. (a) Any person, copartnership, association or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding three hundred dollars ($300) for the first offense and for any second or subsequent offense shall be sentenced [fol. 22] upon conviction, to pay a fine not exceeding five hundred dollars ($500). Any such person, or the members, agents, servants or employes of any such partnership or association, or the officers, directors, agents, servants or employees of any such corporation responsible for any violation of any of the provisions of this Act, in addition to the fines hereinbefore prescribed, may upon a first conviction be sentenced to imprisonment for a term not exceeding six months and upon a second or subsequent conviction, shall be sentenced to imprisonment for a term of not more than one year;

"(b) Upon proof being made that any licensee under this Act has violated any of the provisions of this Act, the

Board, or the Court of Quarter Sessions of the proper county, as the case may be, may, in its discretion, revoke or suspend any license issued under this Act to any such licensee. The right to suspend or revoke licensees as herein set forth shall be an additional penalty to those set forth in paragraph 'A' of this Section."

(J) "Section 5 (a). It shall be unlawful for any person to manufacture malt or brewed beverages unless such person holds a valid manufacturer's license issued by the Board. The Board shall issue to any person, a resident of this Commonwealth, of good repute, who applies therefor, pays the license fee hereinafter prescribed, and files the bond hereinafter required, a Manufacturer's License to produce and manufacture malt or brewed beverages and to transport, sell and deliver malt or brewed beverages at or from one or more places of manufacture or storage, only in original packages, in quantities of not less than two hun- [fol. 23] dred eighty-eight fluid ounces, anywhere within the Commonwealth. Each individual applicant for a manufacturers' license, and in the case of partnerships and associations, each member thereof shall be a citizen of the United States and have been residents of this Commonwealth at least two years prior to the date of their respective applications. In the case of corporations organized or registered under the laws of this Commonwealth, it must appear that all of the officers and directors and the owners of at least fifty-one per centum of the capital stock of the corporation are citizens of the United States and have for a period of at least two years prior to the date of application been residents of this Commonwealth. Licenses for places of storage shall be limited to those maintained by manufacturers at the effective date of this Act and thereafter the Board shall issue no licenses for places of storage in addition to those maintained at the effective date of this Act."

10. The said Beverage License Law of the Commonwealth of Pennsylvania and the regulations issued thereunder are unconstitutional and invalid in that they contravene Section 8 of Article I of the Constitution of the United States, which, in part, is as follows:

"The Congress shall have power to * * * regulate commerce with foreign nations and among the several states and with the Indian tribes."

and also that provision of the Fourteenth Amendment of the Constitution of the United States which provides:

"No State shall make or enforce any law which shall [fol. 24] abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

and also in contravention of Section 2 of Article IV of the Constitution of the United States which provides as follows:

"The citizens of each State shall be entitled to all privileges and immunities of citizens of the several states."

11. An actual and immediate controversy exists between the Complainant and the defendants in that the Complainant, as hereinbefore recited, is required by certain invalid laws and regulations to apply for and obtain an Importing Distributor's License for the purpose of continuing the Complainant's business as an importing distributor of malt and brewed beverages at wholesale within the Commonwealth of Pennsylvania, notwithstanding the invalidity and unconstitutionality of the terms of the aforesaid Act of Assembly and the regulations aforesaid; that the failure to obtain such license subjects the Complainant to fines, penalties and imprisonment imposed by said Act. Complainant is advised by counsel that there is no recovery from the Commonwealth of Pennsylvania for the payment of the license fee as prescribed by the aforesaid invalid Act of Assembly. The jurisdiction of this Court is invoked because of certain and various Federal questions involved as follows:

The invalidity of the Beverage License Law aforesaid and the regulations issued by the defendant Board and the [fol. 25] members thereof arise from the violation by said law and regulations of the provisions of Section 8 of Article I of the Constitution of the United States; Article IV, Section 2 of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States.

That there is involved in this controversy the right of the Complainant and others similarly situated to buy, trans-

port and import in interstate commerce, and to sell and deliver to purchasers in the Commonwealth of Pennsylvania malt and brewed beverages manufactured outside the Commonwealth of Pennsylvania, free from the unlawful, discriminatory provisions and onerous burdens imposed by the said Beverage License Law;

That the right of the Complainant to transport and import in interstate commerce, and to sell and deliver to purchasers in the Commonwealth of Pennsylvania malt and brewed beverages manufactured outside the Commonwealth of Pennsylvania free from such burdensome and discriminatory provisions of said Act is of a value far in excess of the sum of $3,000; that the value of the malt and brewed beverages which the Complainant has annually sold and imported into the Commonwealth of Pennsylvania, and which it has annually sold and imported in interstate commerce into the Commonwealth of Pennsylvania is, upon being freed from such burdensome and discriminatory provisions herein recited, in excess of the sum of $500,000;

That the Complainant, by reason of great expenditures of money, by advertising, and other means, has develop[ed] and enjoys a large demand and sale for malt and brew[ed] beverages manufactured outside the Commonwealth of [fol. 26] Pennsylvania; that in the Commonwealth of Pennsylvania there exists a large demand on the part of numerous consumers and retail dealers for malt and brewed beverages manufactured outside the Commonwealth of Pennsylvania by nationally known breweries and sold and distributed in the Commonwealth of Pennsylvania.

Wherefore, Complainant prays:

(a) That a writ of subpoena issue directed to Walter T. Grosscup, W. Worrell Wagner and Leo A. Crossen, constituting the Pennsylvania Liquor Control Board; Charles F. Kelley, District Attorney of Philadelphia County; Willb Hadley, County Treasurer of Philadelphia County, Pennsylvania; Charles J. Margiotti, Attorney General of the Commonwealth of Pennsylvania, and George H. Earle, 3d, Governor of the Commonwealth of Pennsylvania, Defendants, to appear and make answer to this Bill of Complaint; and that a hearing hereon be had by three Judges as provided by the Act of Congress of June 18, 1910, Chapter 309, Section 17, 36 Stat. 557, as amended (28 U. S. C. A. Section

380), for an interlocutory injunction, and that upon the organization of such three Judge Court, and upon due notice to the defendants, and each of them, that an interlocutory injunction suspending and restricting the enforcing, operation, and execution of the said Act of Assembly of the Commonwealth of Pennsylvania as above provided be made and entered; that until hearing and determination of the application for an interlocutory injunction as aforesaid, this Honorable Court issue its temporary restraining order, as provided in said Section 380 U. S. C. A., to prevent immediate and irreparable loss or damage to the Complainant, which will result as aforesaid, and particularly [fol. 27] with respect to the aforesaid statutory penalties, before notice can be served and hearing had upon the application for an interlocutory injunction restraining the defendants, and each of them, their respective appointees, assistants, employees and successors in office, and each of them, from enforcing or attempting to enforce any of the provisions of the said Beverage License Law insofar as said Act imposes an "Importing Distributor's License" of $900 per year, as specified in said Act; and restraining said defendants, and their officers, appointees, assistants and employees, from attempting to collect said "Importing Distributor's License" fee; and from instituting or causing to be instituted any prosecution or proceeding, civil or criminal, against this Complaint, or others similarly situated, for failure to pay said "Importing Distributor's License" fee, as specified in said Act; and from imposing, or attempting to impose, any of the penalties for the failure of the Complainant, or other distributors similarly situated, to pay said "Importing Distributor's License"; and from seizing, or attempting to seize, selling, or attempting to sell, any property of the Complainant, or any importing distributor, for failure to pay said "Importing Distributor's License"; and from forfeiting, or attempting to forfeit, to the Commonwealth of Pennsylvania any malt or brewed beverages imported into the Commonwealth of Pennsylvania for failure of the consignee to pay said "Importing Distributor's License"; and from interfering with, or attempting to prevent any common or private carrier from transporting malt and brewed beverages that may be consigned to the Complainant's customers, or to any other importing distributor, who has not obtained an "Im-

porting Distributor's License"; and from interfering with, [fol. 28] or attempting to prevent any common or private carrier from delivering malt or brewed beverages which have been transported into the Commonwealth of Pennsylvania consigned to the Complainant's customers, or to a person who does not have such distributor's license; and restraining the said defendants from revoking, or causing to be revoked, the wholesale distributor's license held by the Complainant herein;

(b) That upon final hearing of this cause, such injunction be made permanent;

(c) That the Act of the General Assembly of the Commonwealth of Pennsylvania, known as the Beverage License Law, as enacted and approved July 18, 1935, being Act No. 398 of the Sessions of the General Assembly for 1935, be declared and adjudged by this Court as unconstitutional and void as in contrav f the rights of the Complainant under Section 8 of rticle I of the Constitution of the United States; Section 2 of Article IV of the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States, to the extent that Complainant's rights are thereby violated.

(d) That Sections 5 (a); 5 (b); 18; 19 (c); 23 (e); 23 (g); 23 (h); 23 (p); 23 (z); 29 (a), and 29 (b) of the said Act of the General Assembly of the Commonwealth of Pennsylvania herein more particularly set forth in Paragraph 9, be declared and adjudged to be unconstitutional and void, in contravention of the Complainant's rights under Section 8 of Article I of the Constitution of the United States; Section 2 of Article IV of the Constitution of the United States, and the Fourteenth Amendment thereto, to the extent that Complainan's rights are thereby violated.

[fol. 29] (e) That the Defendants, and each of them, their respective appointees, assistants and employees and successors in office, and each of them, be enjoined from in any way or manner whatsoever enforcing against the Complainant and other importing distributors of malt and brewed beverages similarly situated, the provisions of said Beverage License Law and the regulations issued thereunder, including Regulation No. 51, as herein set forth as "Exhibit B", or any part or parts thereof, insofar as they contravene the

provisions of the Constitution of the United States, and insofar as they affect the rights of the Complainant to impart and sell malt and brewed beverages within the Commonwealth of Pennsylvania, and from attempting to enforce against this Complainant and other importing distributors of malt and brewed beverages similarly situated within the Commonwealth of Pennsylvania any of the provisions of said statute or regulations herein complained of, and from instituting or causing to be instituted any prosecution or proceeding, civil or criminal, against this Complainant, its officers, agents, or employees, to enforce any of such provisions of said statute or regulations.

(f) For such other and further relief in the premises as to your Honorable Court may seem just and equitable.

Premier-Pabst Sales Company, by L. M. Arbogast, Eastern Division Manager and Attorney in Fact. Wesley, Wagoner, Troutman & McWilliams, by C. S. Wesley, Attorneys for Complainant, 1000 Packard Building, Philadelphia.

[fols. 30–78] *Duly sworn to by L. M. Arbogast. Jurat omitted in printing.*

[fol. 79] EXHIBIT "B" TO BILL AND PETITION

Commonwealth of Pennsylvania

Pennsylvania Liquor Control Board

Regulation No. 51

July 25, 1935.

Subject: Application for Distributors and Importing Distributors Licenses

Section 1. Except as hereinafter provided, every person holding a Malt Liquor Distributor's License issued by the respective County Treasurers of this Commonwealth shall, not later than August 10, 1935, file with the Pennsylvania Liquor Control Board an application for a Malt or Brewed Beverage Distributor's or Importing Distributor's License on forms furnished by the Board, together with a surety

bond in the amount of One Thousand ($1000.00) Dollars in the case of a Distributor and in the case of an Importing Distributor in the amount of Two Thousand ($2,000.00) Dollars, an application fee of Ten ($10.00) Dollars and a license fee calculated from July 1, 1935 at the rate of Thirty-three and 33/100 ($33,33) dollars in the case of a Distributor and in the case of an Importing Distributor at the rate of Seventy-five ($75.00) Dollars for each month the license will be in force in the particular license district fixed by the Board in which the Distributor's or Importing Distributor's place of business is located, less a credit for the unused portion of the fee paid by the Distributor to the County Treasurer for such license calculated on a monthly basis from July 1, 1935.

In the event that the Distributor fails to file an application as hereinbefore set forth, then he may continue to operate as a Distributor defined in the Act of July 18, 1935, No. [fol. 80] 398, known as the Beverage License Law, only for such a period under his present license as the unused portion of the fee paid by such Distributor to the County Treasurer for such license will bear to the annual fee of Four Hundred ($400.00) Dollars, both calculated on a monthly basis.

Failure to file an application as above set forth may result in a Distributor being without a license between the expiration date of his present license and the license year as set up by the Board for the district in which his place of business is located.

Exception:

Licenses of Distributors who paid to the County Treasurers fees of $37.50 and $50.00 respectively will expire on August 1, 1935, at which time operations must be discontinued, unless an application for a Distributor's or an Importing Distributor's License is filed with the Board prior to that date, as the unused balance of such fees calculated as of July 1, 1935 is not sufficient on the basis of the new fees calculated at the rate of $33.33 per month to extend such license beyond said date.

Section 2. Persons holding both a Distributor's License and a Liquor Importor's License may under Act 398 of July 18, 1935 known as the Beverage License Law hold only one class of license. Such Distributor if he prefers to

retain his Liquor Importer's License will be given such time to dispose of his stock of malt or brewed beverages as the Board in each individual case may determine. Each such Distributor shall furnish to the Board, not later than August 1, 1935 a complete inventory of the stock on hand of malt or brewed beverages both domestic and imported, if any.

Pennsylvania Liquor Control Board.

[fol. 81] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF H. PERLSTEIN SUR APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed Sept. 18, 1935

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

H. Perlstein, being duly sworn according to law, deposes and says that he is the President of the Premier-Pabst [fol. 82] Sales Company, Complainant in the above cause; that the Complainant is a Delaware corporation with registered office and place of business at 1601 Chestnut Street, Philadelphia, Pennsylvania; that the said corporation has been continuously engaged since 1933 in the wholesale distribution of malt and brewed beverages throughout the states of the United States and in the State of Pennsylvania; that the said corporation has registered and qualified in the Commonwealth of Pennsylvania as a foreign corporation and is now and has been since 1933 engaged in the sale and distribution of malt and brewed beverages in the Commonwealth of Pennsylvania, and, as well, in the States of New York, New Jersey, Delaware, Maryland and the District of Columbia; that as such registered corporation it received on June 3, 1935, on payment of $150, an annual license from the Commonwealth of Pennsylvania (being License #925) to conduct the business of a wholesale distributor of malt and brewed beverages in accordance with the provisions of the Act of the Commonwealth of Pennsylvania of May 3, 1933, as amended; that said license pos-

sessed by the Complainant is a valid and subsisting license which has not been legally revoked at this time.

That the Complainant owns and possesses personal property and office fixtures, inventory and merchandise in the State of Pennsylvania amounting to upwards of $7,000. The Complainant has expended since April 7, 1933, in advertising, sales promotion and other incidental expenses for the establishment of its trade, custom and good will in the State of Pennsylvania approximately $400,000. That the Complainant engages in Pennsylvania in its service thirty-one employees, whose salaries aggregate annually $80,000.

Complainant during the calendar year 1934 sold and shipped in exeess of 50,000 barrels of malt and brewed [fol. 83] beverages to its customers in the Commonwealth of Pennsylvania, approximating in value $500,000; and trans-shipped through and over the Commonwealth of Pennsylvania 130,000 barrels and 300,000 cases of malt and brewed beverages of a total value in excess of $2,000,000.

That the business in which the Complainant is engaged is the sale of Pabst beer manufactured and brewed in the breweries of the Premier-Pabst Corporation situate at Milwaukee, Wisconsin, and Peoria, Illinois; that the Complainant's profits as a distributor of said malt and brewed beverages are measured by, and consist of the difference between the breweries' price for said beverages and the price paid by the Pennsylvania purchasers thereof, which profit to the Complainant is far in excess of $3,000 per annum; that the said beer so shipped and sold by the Complainant is a malt or brewed beverage as defined in the Pennsylvania Beverage License Law of 1935, hereinafter more specifically referred to.

That all of the Complainant's outstanding capital stock is owned by the Premier-Pabst Corporation, a corporation organized and existing under the laws of the State of Delaware; that the owners of fifty-one per cent of the Complainant's capital stock, its officers and directors are citizens of the United States, but none of whom is a resident of the Commonwealth of Pennsylvania.

That the Complainant's business comprises principally the taking orders for the purchase and importation of salt and brewed beverages manufactured by the said Premier-Pabst Corporation, manufacturing beer in the City of Milwaukee, Wisconsin, and in the City of Peoria, Illinois, said malt and brewed beverages being shipped therefrom re-

spectively by interstate carriage to Complainant's customers at their place of business as aforesaid; that said in-
[fol. 84] terstate shipments from the States of Wisconsin and Illinois to the States aforesaid, particularly the shipments into and through the State of Pennsylvania, are interstate shipments made by railroad from said points without said states to the place of business of the Complainant's customers in the Commonwealth of Pennsylvania and elsewhere.

That the General Assembly of the Commonwealth of Pennsylvania has enacted a law, being Act # 398, and cited as the "Beverage License Law", whereby there was constituted the Liquor Control Board of the Commonwealth of Pennsylvania, vested with full power and authority to control and regulate the manufacture, sale and distribution of malt and brewed beverages; that under the terms of said Act of Assembly, the Liquor Control Board aforesaid requires the Complainant, Premier-Pabst Sales Company, to obtain a certain license specified in the aforesaid Act of Assembly as "Importing Distributor's License", and to pay therefor the sum of $900 for the ensuing licensed year and to file a proper bond in the amount of $2,000, and to stipulate under the provisions of the said Beverage License Law that its stockholders, directors and officers are both citizens of the United States and residents of the Commonwealth of Pennsylvania for a period of two years; that said license fee of $900 and said surety bond of $2,000 are requirements greatly in excess of those imposed upon wholesale distributors who sell and distribute malt and brewed beverages exclusively manufactured in the Commonwealth of Pennsylvania; that the distributors engaged in the sale and distribution of brewed beverages manufactured solely in the Commonwealth of Pennsylvania are required to pay a license fee of only $400 and to file a bond in the sum of only $1,000.

That said requirement exacted of importers of foreign brewed beverages constitutes an undue and discriminatory
[fol. 85] burden upon Complainant's interstate business and upon interstate commerce generally; that by the terms of the aforesaid Act, the said Liquor Control Board is vested with full power and authority to make and promulgate rules and regulations governing, inter alia, interstate shipments and importation of malt and brewed beverages manufactured in other states and shipped to and imported

by Pennsylvania distributors; that the importation of beverages brewed in other states into the Comonwealth of Pennsylvania by interstate shipments, solely in accordance with the rules and regulations of said Liquor Control Board, subjects interstate commerce to an undue and discriminatory burden and is an unconstitutional exercise of the police power of the Commonwealth of Pennsylvania; that the requirement that the Complainant's stockholders, officers and directors be residents of the Commonwealth of Pennsylvania for a period of two years violates the Complainant's constitutional rights, as provided by the "Due Process" clause and the "Equal Protection of the Laws" clause of the Fourteenth Amendment of the United States Constitution.

That the Complainant, on advice of counsel, has not applied for or received an Importing Distributor's License, as required by the terms of said Act and the rules and regulations of the said Liquor Control Board; that there is no recovery from the Commonwealth of Pennsylvania for the payment of the license fee as prescribed by the aforesaid invalid Act of Assembly, as under the laws of the Commonwealth of Pennsylvania no appeal to the Courts can be made from the action of an administrative body refusing a refund of tax unless expressly authorized by statute. Your Complainant is advised that there is no statute of the Commonwealth of Pennsylvania expressly authorizing such appeal (Short's Estate, 315 Pa. 561).

[fol. 86] That your deponent verily believes, and hence deposes and says, that irreparable loss and damage will result to the Complainant, Premier-Pabst Sales Company, by the enforcement of said invalid and unconstitutional Act; by the imposition of discriminatory rules and regulations governing interstate shipments and the importation of foreign brewed beverages into the State of Pennsylvania; by the exaction of a high and discriminatory license fee and bond; by the requirement that all sales in the distribution of malt and brewed beverages in Pennsylvania shall be for cash alone; by requiring that corporations engaged in the distribution of imported beverages shall in the ownership of the majority of the stock thereof be owned by United States citizens who are residents of Pennsylvania for a period of at least two years, and that the officers and directors thereof be United States citizens who are residents of the State of Pennsylvania for a period of at least

two years, and by divers other unfair and discriminatory unconstitutional exactions.

That by the provisions of Regulation # 51, dated July 25, 1935, issued by the Pennsylvania Liquor Control Board, all importing distributors of malt or brewed beverages are required to file at once with said Board an application for an Importing Distributor's License and pay the specified license fee therefor of $900 and to file a bond of $2,000, and certify that the corporation applicant's stockholders, officers and directors are both citizens of the United States and residents of the Commonwealth of Pennsylvania for a period of at least two years; that failure to so comply will jeopardize the Complainant's business in adjacent states and destroy Complainant's business within the Commonwealth of Pennsylvania, and will subject Complainant, its officers and employees, to penalties, civil and criminal, as in said Act provided.

[fol. 87] Your deponent further avers that the Complainant's business, assets, trade, custom and good will will be destroyed and rendered valueless unless the Complainant corporation continues to exercise its right under its existing license to sell and distribute malt and brewed beverages in the Commonwealth of Pennsylvania free from the discriminatory and unreasonable provisions of the said Act of Assembly and the rules and regulations issued by the Liquor Control Board under the authority thereof. Your deponent further avers that said discriminatory license fee and bond, and the aforesaid provisions of the Beverage License Law of Pennsylvania prohibit the Complainant as a foreign corporation from transacting its business in the Commonwealth of Pennsylvania and by the discriminatory provisions of said law preclude Complainant from competing with distributors of malt and brewed beverages manufactured in said State. That if the Complainant is disqualified as a licensee under the terms of the aforesaid Act (none of its officers, directors or stockholders being residents of the State of Pennnsylvaia), Complainant's business assets therein will be rendered wholly valueless and its business in said Commonwealth destroyed.

Deponent further avers that unless the defendants named in the Bill of Complaint filed in this cause are enjoined from proceeding to enforce the discriminatory and unconstitutional provisions and requirements of said Act and the

regulations issued thereunder, the Complainant will sustain irreparable loss and damage.

H. Perlstein.

Sworn to and subscribed before me this 10th day of September, 1935. H. Goebel. My Commission Expires June 2nd, 1939. (Seal.)

[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF L. M. ARBOGAST SUR APPLICATION FOR INTERLOCUTORY INJUNCTION

UNITED STATES OF AMERICA,
State of Pennsylvania,
County of Philadelphia, ss:

L. M. Arbogast, being duly sworn according to law, deposes and says that he is the Eastern Division Manager of [fol. 89] the Premier-Pabst Sales Company, Complainant in the above cause; that the Complainant is a Delaware corporation with registered office and place of business at 1601 Chestnut Street, Philadelphia, Pennsylvania; that the said corporation has been continuously engaged since 1933 in the wholesale distribution of malt and brewed beverages throughout the states of the United States and in the State of Pennsylvania; that the said corporation has registered and qualified in the Commonwealth of Pennsylvania as a foreign corporation and is now and has been since 1933 engaged in the sale and distribution of malt and brewed beverages in the Commonwealth of Pennsylvania, and, as well, in the States of New York, New Jersey, Delaware, Maryland and the District of Columbia; that as such registered corporation it received on June 3, 1935, on payment of $150, an annual license from the Commonwealth of Pennsylvania (being License #925) to conduct the business of a wholesale distributor of malt and brewed beverages in accordance with the provisions of the Act of the Commonwealth of Pennsylvania of May 3, 1933, as amended; that said license possessed by the Complainant

is a valid and subsisting license which has not been legally revoked at this time.

That the Complainant owns and possesses personal property and office fixtures, inventory and merchandise in the State of Pennsylvania amounting to upwards of $7,000. The Complainant has expended since April 7, 1933, in advertising, sales promotion and other incidental expenses for the establishment of its trade, custom and good will in the State of Pennnsylvania approximately $400,000. That the Complainant engages in Pennsylvania in its service thirty-one employees, whose salaries aggregate annually $80.000.

Complainant during the calendar year 1934 sold and shipped in excess of 50,000 barrels of malt and brewed [fol. 90] beverages to its customers in the Commonwealth of Pennsylvania, approximating in value $500,000; and trans-shipped through and over the Commonwealth of Pennsylvania 130,000 barrels and 300,000 cases of malt and brewed beverages of a total value in excess of $2,000,000.

That the business in which the Complainant is engaged is the sale of Pabst beer manufactured and brewed in the breweries of the Premier-Pabst Corporation situate at Milwaukee, Wisconsin, and Peoria, Illinois; that the Complainant's profits as a distributor of said malt and brewed beverages are measured by, and consist of the difference between the breweries' price for said beverages and the price paid by the Pennsylvania purchasers thereof, which profit to the Complainant is far in excess of $3,000 per annum; that the said beer so shipped and sold by the Complainant is a malt or brewed beverage as defined in the Pennsylvania Beverage License Law of 1935, hereinafter more specifically referred to.

That all of the Complainant's outstanding capital stock is owned by the Premier-Pabst Corporation, a corporation organized and existing under the laws of the State of Delaware; that the owners of fifty-one per cent. of the Complainant's capital stock, its officers and directors are citizens of the United States, but none of whom is a resident of the Commonwealth of Pennsylvania.

That the Complainant's business comprises principally the taking orders for the purchase and importation of malt and brewed beverages manufactured by the said Premier-

Pabst Corporation, manufacturing beer in the City of Milwaukee, Wisconsin, and in the City of Peoria, Illinois, said malt and brewed beverages being shipped therefrom re-
[fol. 91] spectively by interstate carriage to Complainant's customers at their place of business as aforesaid; that said interstate shipments from the States of Wisconsin and Illinois to the States aforesaid, particularly the shipments into and through the State of Pennnsylvaia, are interstate shipments made by railroad from said points without said states to the place of business of the Complainant's customers in the Commonwealth of Pennsylvania and elsewhere.

That the General Assembly of the Commonwealth of Pennsylvania has enacted a law, being Act #398, and cited as the "Beverage License Law", whereby there was constituted the Liquor Control Board of the Commonwealth of Pennsylvania, vested with full power and authority to control and regulate the manufacture, sale and distribution of malt and brewed beverages; that under the terms of said Act of Assembly, the Liquor Control Board aforesaid requires the Complainant, Premier-Pabst Sales Company, to obtain a certain license specified in the aforesaid Act of Assembly as "Importing Distributor's License", and to pay therefor the sum of $900 for the ensuing licensed year and to file a proper bond in the amount of $2,000, and to stipulate under the provisions of the said Beverage License Law that its stockholders, directors and officers are both citizens of the United States and residents of the Commonwealth of Pennsylvania for a period of two years; that said license fee of $900 and said surety bond of $2,000 are requirements greatly in excess of those imposed upon wholesale distributors who sell and distribute malt and brewed beverages exclusively manufactured in the Commonwealth of Pennsylvania; that the distributors engaged in the sale and distribution of brewed beverages manu-
[fol. 92] factured solely in the Commonwealth of Pennsylvania are required to pay a license fee of only $400 and to file a bond in the sum of only $1,000.

That said requirement exacted of importers of foreign brewed beverages constitutes an undue and discriminatory burden upon Complainant's interstate business and upon interstate commerce generally; that by the terms of the aforesaid Act, the said Liquor Control Board is vested with

full power and authority to make and promulgate rules and regulations governing, inter alia, interstate shipments and importation of malt and brewed beverages manufactured in other states and shipped to and imported by Pennsylvania distributors; that the importation of beverages brewed in other states into the Commonwealth of Pennnsylvaia by interstate shipments, solely in accordance with the rules and regulations of said Liquor Control Board, subjects interstate commerce to an undue and discriminatory burden and is an unconstitutional exercise of the police power of the Commonwealth of Pennsylvania; that the requirement that the Complainant's stockholders, officers and directors be residents of the Commonwealth of Pennnsylvania for a period of two years violates the Complainant's constitutional rights, as provided by the "Due Process" clause and the "Equal Protection of the Laws" clause of the Fourteenth Amendment of the United States Constitution.

That the Complainant, on advice of counsel, has not applied for or received an Importing Distributor's License, as required by the terms of said Act and the rules and regulations of the said Liquor Control Board; that there is no recovery from the Commonwealth of Pennsylvania for the payment of the license fee as prescribed by the aforesaid invalid Act of Assembly, as under the laws of the Common-
[fol. 93] wealth of Pennsylvania no appeal to the Courts can be made from the action of an administrative body refusing a refund of tax unless expressly authorized by statute. Your Complainant is advised that there is no statute of the Commonwealth of Pennsylvania expressly authorizing such appeal (Short's Estate, 315 Pa. 561).

That your deponent verily believes, and hence deposes and says, that irreparable loss and damage will result to the Complainant, Premier-Pabst Sales Company, by the enforcement of said invalid and unconstitutional Act; by the imposition of discriminatory rules and regulations governing interstate shipments and the importation of foreign brewed beverages into the State of Pennsylvania; by the exaction of a high and discriminatory license fee and bond; by the requirement that all sales in the distribution of malt and brewed beverages in Pennsylvania shall be for cash alone; by requiring that corporations engaged in the distribution of imported beverages shall in the ownership of the majority of the stock thereof be owned by United States

citizens who are residents of the State of Pennsylvania for a period of at least two years, and that the officers and directors thereof be United States citizens who are residents of the State of Pennsylvania for a period of at least two years, and by divers other unfair and discriminatory unconstitutional exactions.

That by the provisions of Regulation # 51, dated July 25, 1935, issued by the Pennsylvania Liquor Control Board, all importing distributors of malt or brewed beverages are required to file at once with said Board an application for an Importing Distributor's License and pay the specified license fee therefor of $900 and to file a bond of $2,000, and certify that the corporation applicant's stockholders, officers [fol. 94] and directors are both citizens of the United States and residents of the Commonwealth of Pennsylvania for a period of at least two years; that failure to so comply will jeopardize the Complainant's business in adjacent states and destroy Complainant's business within the Commonwealth of Pennsylvania, and will subject Complainant, its officers and employees, to penalties, civil and criminal, as in said Act provided.

Your deponent further avers that the Complainant's business, assets, trade, custom and good will will be destroyed and rendered valueless unless the Complainant corporation continues to exercise its right under its existing license to sell and distribute malt and brewed beverages in the Comonwealth of Pennsylvania free from the discriminatory and unreasonable provisions of the said Act of Assembly and the rules and regulations issued by the Liquor Control Board under the authority thereof. Your deponent further avers that said discriminatory license fee and bond, and the aforesaid provisions of the Beverage License Law of Pennsylvania prohibit the Complainant as a foreign corporation from transacting its business in the Commonwealth of Pennsylvania and by the discriminatory provisions of said law preclude Complainant from competing with distributors of malt and brewed beverages manufactured in said State. That if the Complainant is disqualified as a licensee under the terms of the aforesaid Act (none of its officers, directors or stockholders being residents of the State of Pennsylvania), Complainant's business assets therein will be rendered wholly valueless and its business in said Commonwealth destroyed.

Deponent further avers that unless the defendants named in the Bill of Complaint filed in this cause are enjoined from proceeding to enforce the discriminatory and unconstitu-
[fol. 95] tional provisions and requirements of said Act and the regulations issued thereunder, the Complainant will sustain irreparable loss and damage.

L. M. Arbogast.

Sworn to and subscribed before me this 10th day of September, A. D. 1935. Jane L. Sheldon, 1000 Packard Bldg., Notary Public. My Commission Expires March 2, 1937.

[fols. 96 & 97] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR INTERLOCUTORY INJUNCTION UNDER SECTION 266 OF THE JUDICIAL CODE—Filed August 10, 1935

And now, to wit, this 10th day of August, A. D. 1935, comes Premier-Pabst Sales Company, the Complainant, by its attorneys, Wesley, Wagoner, Troutman & McWilliams, and files this, its motion for a hearing in this cause of its application for an interlocutory injunction in accordance with Section 266 of the Judicial Code of the United States, as amended by the Act of Congress of March 4, 1913, and February 13, 1925.

Wesley, Wagoner, Troutman & McWilliams, by C. S. Wesley, Attorneys for Complainant.

[fol. 98] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF W. T. GROSSCUP ET AL. TO BILL OF COMPLAINT—Filed Sept. 5, 1935

To the Honorable the Judges of said Court:

The defendants, Walter T. Grosscup, W. Worrell Wagner and Leo A. Crossen, constituting the Pennsylvania

Liquor Control Board; Charles J. Margiotti, Attorney General of the Commonwealth of Pennsylvania; and George H. [fol. 99] Earle, 3d, Governor of the Commonwealth of Pennsylvania, make answer to the whole of the said Bill of Complaint filed herein, as follows:

1. The averments of Paragraph One are admitted.

2. As to Paragraph Two, the defendants deny that under color of a certain Act of Assembly of the Commonwealth of Pennsylvania of July 18, 1935, being Act 398, officially designated as the "Beverage License Law", there is any threatened deprivation of any rights, privileges or immunities secured to complainant by the Constitution of the United States. The defendants further deny that the cause of action asserted in the Bill of Complaint has in fact arisen under the Constitution of the United States, but on the contrary aver that such allegation of a federal question is fictitious and fraudulent in that the question of the power of the State to regulate the liquor traffic within its boundaries has been frequently determined by the courts of the last resort of the Commonwealth of Pennsylvania and of the United States, and such power is further secured to the Commonwealth of Pennsylvania by virtue of the Twenty-First Amendment to the Constitution of the United States, which reads inter alia as follows:

"Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

3. The averments of Paragraph Three are admitted.

4. The averments of Paragraph Four are admitted.

5. Insofar as the averments of Paragraph Five are correct quotations from the Act of Assembly of the Common- [fol. 100] wealth of Pennsylvania, being Act 398 approved July 18, 1935, the averments are admitted. In view of the fact that numerous errors, typographical and otherwise, appear in the quotations in the paragraph, such averments as are incorrectly quoted are denied, and in answer thereto reference is made to Exhibit "A" attached hereto and made a part hereof, which is a true and correct copy of that certain Act of Assembly of the Commonwealth of Pennsylvania, being Act 398 approved July 18, 1935.

The conclusions averred on the part of the complainant in said Paragraph Five are denied in the following particulars:

(A) The conclusion averred in the first paragraph of Paragraph Five that the said Beverage Law provides for the licensing of "manufacturers", "distributors", and "importing distributors" of malt or brewed beverages, is only partially correct for the reason that the Act also provides for the licensing of retail dispensers including hotels, restaurants, clubs, public service companies, and transporters for hire, as will appear by reference to Exhibit "A" hereto attached.

(B) The averment appearing on page four of the Bill that importing distributors and distributors are required under Section 19 of the said Act to pay to the County Treasurer license fees of Nine Hundred Dollars and Four Hundred Dollars, respectively, is incorrect for the reason that the Act requires the payment of the said license fees to the Pennsylvania Liquor Control Board, as will appear by reference to Exhibit "A" hereto attached.

(C) The averment at the top of page five is incorrect for the reason that the reference is obviously to Section 23 (z), [fol. 101] which reads as follows, to wit:

"For any person to transport or import any malt or brewed beverages into this Commonwealth except in accordance with the rules and regulations of the board or for any person to transport malt or brewed beverages into or within this Commonwealth unless there shall be affixed to the original containers in which such malt or brewed beverages are transported stamps or crowns evidencing the payment of the malt liquor tax to the Commonwealth. Provided however that this clause shall not be construed to prohibit transportation of malt or brewed beverages through this Commonwealth and not for delivery therein if such transporting is done in accordance with the rules and regulations of the board."

(D) The averment appearing on page five in the third paragraph thereof is only partially correct in that the said Section 5 provides that no licenses shall be issued to

manufacturers, importing distributors or distributors unless the applicants shall have been residents of the Commonwealth of Pennsylvania for at least two years prior to the date of application, and if the applicants be corporations organized or registered under the laws of the Commonwealth of Pennsylvania unless all of the officers and directors thereof shall have been residents of this Commonwealth for a period of at least two years prior to the date of application and unless the owners of fifty-one per cent of the capital stock of the corporation shall have been for a period of at least two years prior to the date of application residents of the Commonwealth, all of which will appear by reference to Exhibit "A" hereto attached.

(E) The averments appearing on page five of the Bill which refer to "Section 23 (g) and (h)" are only partially [fol. 102] correct for the reason that the said sub-paragraphs provide that no licensee under the Act shall display advertising signs except those permitted under the terms of the said Act, as will appear by reference to Exhibit "A" hereto attached.

(F) The averments appearing on page five of the Bill under "Section 23 (p)" are only partially correct for the reason that the said sub-paragraph (p) of Section 23 of the said Act provides that no malt or brewed beverages shall be sold by any Pennsylvania licensee if labeled contrary to the provisions of the said Act, as will appear by reference to Exhibit "A" hereto attached.

6. The defendants make answer to Paragraph Six as follows:

(A) The defendants admit that "the complainant is a subsidiary corporation of and owned by the Premier-Pabst Corporation, a corporation of the State of Delaware", and that "the officers and directors of the Premier-Pabst Sales Company are not residents of the State of Pennsylvania", and "all of its outstanding capital stock is owned by the said parent corporation, Premier-Pabst Corporation".

(B) The defendants have no knowledge of the business practices of the complainant, and such information being peculiarly within the knowledge of the complainant, proof thereof is demanded if deemed material to this cause.

(C) The defendants admit that at this time the complainant is the holder of a beer wholesale distributor's license issued by the Treasurer of Philadelphia County of the Commonwealth of Pennsylvania, being license number 925, and aver that, inasmuch as the complainant admits its officers and directors are non-residents of the State of [fol. 103] Pennsylvania, the said license was issued by the Treasurer of Philadelphia County in violation of the specific provisions of Section 12 of the Act of Assembly of the Commonwealth of Pennsylvania of May 3, 1933, P. L. 252, as amended by the Act of Assembly approved December 20, 1933 (Special Session 1933-34) P. L. 75, which said section provides inter alia as follows, to wit:

"Licenses shall be granted by the treasurer only to individual citizens of the United States who have been residents of this Commonwealth for at least three years immediately preceding, or to corporations organized in or duly authorized to transact business in this Commonwealth and all of whose officers and directors shall be citizens of the United States who have also been residents of this Commonwealth for at least three years immediately preceding, the applications for license."

(D) The averments in the second paragraph on page seven of Paragraph Six of the Bill are denied as stated, and on the contrary the defendants aver that applicants who are qualified under the Beverage License Law of 1935 may secure an importing distributor's license upon payment of the license fee of Nine Hundred Dollars and the filing of a bond in the sum of Two Thousand Dollars, under which license the licensee is permitted to purchase malt or brewed beverages from manufacturers or other persons outside the Commonwealth of Pennsylvania and from manufacturers and distributors within the Commonwealth of Pennsylvania, and to resell such malt or brewed beverages without restriction as to classes of licensees or persons; whereas, those to whom distributors' licenses are issued for a license fee of Four Hundred Dollars and a bond of One Thousand Dollars are permitted to purchase malt and brewed beverages only from Pennsylvania manu- [fol. 104] facturers or from importing distributors, and are not permitted to resell such malt or brewed beverages to other distributors within the Commonwealth.

The defendants further aver that the complainant herein, by reason of its averment that all of its officers and directors are non-residents of the Commonwealth of Pennsylvania, could not qualify for a license of any sort under the provisions of the Beverage License Law of 1935, or of the Act to which the said Beverage License Law of 1935 is an amendment, as hereinbefore set forth.

(E) As to that portion of Paragraph Six appearing at the bottom of page seven, and on page- eight and nine, of the Bill of Complaint, which is argumentative and consists merely of conclusions of law and fact on the part of the complainant, denial is made of the said conclusions, and the following is specifically denied, "which regulations, in order to effectuate the purpose and design of the aforesaid Act providing for a monopoly on behalf of Pennsylvania brewers and distributors in the sale and distribution in Pennsylvania of malt and brewed beverages will be oppressive and discriminatory, and contrary to the rights and interests of the complainant in deprivation of its rights and destructive of its trade, custom, and good will as a distributor of malt beverages in the Commonwealth of Pennsylvania". On the contrary, defendants aver:

(a) That all persons engaged in the importation into, transportation within or through, or the manufacture, sale and distribution of malt or brewed beverages within the Commonwealth of Pennsylvania, are subject to the provisions of the said Act of Assembly.

(b) That a license to traffic in malt or brewed beverages [fol. 105] is merely a personal privilege, and not a property right or a contract with the State that, as to the licensee, the law will remain unchanged.

(c) That the business of trafficking in malt or brewed beverages is legal in Pennsylvania only when such traffic conforms to the provisions of the laws of the Commonwealth of Pennsylvania regulating and restricting the same.

7. As to Paragraph Seven, the defendants deny that the complainant is oppressively affected by the said Act, and on the contrary aver that persons holding licenses granted by the Commonwealth and accepted by the licensees, are subject not only to such laws as were in force in the Commonwealth at the time of issuance, but also to such laws as

might thereafter be enacted restraining and regulating the traffic in alcoholic beverages.

8. The averments of Paragraph Eight of the Bill are admitted.

9. As to Paragraph Nine, the conclusions of law are denied as stated.

10. The defendants deny the conclusions of law of Paragraph Ten as stated, and on the contrary aver that the said Beverage License Law of the Commonwealth of Pennsylvania, and the regulations issued thereunder, are constitutional and valid as a proper exercise of the police power of the Commonwealth of Pennsylvania and do not contravene the Constitution of the United States, or any of the amendments thereto.

11. As to Paragraph Eleven, the defendants deny the [fol. 106] legal conclusions stated therein. Defendants specifically deny the following portion of said paragraph, to wit, "complainant is advised by counsel that there is no recovery from the Commonwealth of Pennsylvania for the payment of the license fee as prescribed by the aforesaid Act of Assembly", and aver that Section 1 of the Act of Assembly of the Commonwealth of Pennsylvania, approved July 18, 1935, known as Act 412½, (Exhibit B) provides for an appropriation to the Pennsylvania Liquor Control Board of as much of the moneys from time to time in The State Stores Fund as may be necessary for the purposes therein named, among which is the following:

"(j) For the payment of claims for refunds made to and approved by the board for moneys paid into The State Stores Fund to which the Commonwealth is not rightfully entitled."

Defendants further deny that "an actual and immediate controversy exists between the Complainant and the defendants by reason of the invalidity and unconstitutionality of the terms of the aforesaid Act of Assembly, and on the contrary aver, as has been hereinbefore set forth, that the power of a State to regulate the liquor traffic within its boundaries has been frequently determined by the Supreme Court of the Commonwealth of Pennsylvania and the Supreme Court of the United States.

12. Defendants further aver that the said Beverage License Law of the Commonwealth of Pennsylvania and the regulations issued thereunder are constitutional and valid for the following reasons:

(A) Intoxicating liquors may not be dealt with in interstate commerce in the same unqualified manner as other [fol. 107] subjects of commerce. The Act of Congress of August 8, 1890 (26 Stat. 313) known as the Wilson Act, and the Act of Congress of March 1, 1913 (37 Stat. 699) known as the Webb-Kenyon Act, have partially divested intoxicating liquors of their interstate character to the extent such liquors may not be shipped or transported in interstate commerce from one State into another if such liquor is intended to be received, possessed, sold, or in any manner used in violation of any law of the State to which it is sent. The Twenty-First Amendment to the Constitution of the United States has further removed intoxicating liquor from the protection of interstate commerce by prohibiting its transportation or importation into any State for delivery or use therein in violation of its laws.

(B) Intoxicating beverages are properly subject to the police power of the various States, and the exercise by a State of its police power in regulating the traffic in intoxicating beverages does not depend on any question as to the presence or absence of discrimination for or against particular persons or classes of persons.

(C) When a State in the exercise of its police power has provided for the regulation of the traffic in intoxicating beverages, no property right which is protected by a constitutional provision exists, either in the intoxicating beverages dealt with in the said traffic, in the privilege granted to engage in such traffic, or in the instrumentalities necessary to the business.

(D) A State may lawfully grant the right to engage in the traffic in intoxicating beverages to a certain class or classes of persons, and withhold it from all others in the valid exercise of its police power to regulate such traffic.

[fol. 108] (E) A State may lawfully classify licenses to engage in the traffic in intoxicating beverages, fix license fees, and change such classifications and fees from time to time as the legislature in its wisdom deems proper, and

may limit the extent to which licensees in various classes may engage in such traffic and also prescribe the conditions under which such classes of licenses may be issued.

(F) The said Act of Assembly does not in any manner prohibit any resident of the Commonwealth of Pennsylvania from purchasing malt or brewed beverages manufactured outside the Commonwealth of Pennsylvania for his own use, nor does it prohibit retail licensees from purchasing from manufacturers or persons located outside of the Commonwealth of Pennsylvania or from reselling bevearges so purchased. The said Act confers upon that class of licensee defined as "importing distributors" greater privileges than those accorded to "distributors", in that importing distributors may resell malt or brewed beverages purchased to all persons and licensees without limitation, whereas distributors under the said Act may not resell beverages purchased by them to other licensees in the same class, to wit: distributors.

13. When a State in the exercise of its police power has regulated and restricted the traffic in intoxicating beverages within its borders, it may without violating the Commerce Clause of the Constitution prescribe reasonable regulations concerning the manner in which intoxicating beverages may be transported through the State in interstate commerce.

14. The defendants further aver that the complainant is not entitled to the relief prayed for, for the reason that the [fol. 109] said Act of Assembly does not prescribe any restrictions upon the transportation of malt or brewed beverages through the Commonwealth and not for delivery therein, but simply confers upon the Liquor Control Board the power to prescribe regulations affecting such transportation. No such regulations have been promulgated.

15. Defendants further aver that the complainant is not entitled to the relief prayed for, for the reason that its action is intended to interfere with the operation of a penal statute as to which the complainant has a full, complete and adequate remedy at law if the defendants should at any time unlawfully attempt to interfere with its business.

16. Defendants further aver that complainant is not entitled to the relief prayed for, for the reason that it has vio-

lated the maxim of equity: "He who comes into equity must come with clean hands." Paragraph Six of the Bill of Complaint avers the complainant's substantial interest to be based upon a distributor's license issued to it under the provisions of the Act of Assembly of the Commonwealth of Pennsylvania approved the third day of May, 1933, P. L. 252, as amended. Complainant also avers in Paragraph Six of the Bill of Complaint that it is a foreign corporation and that all of its officers and directors are non-residents of Pennsylvania. Under the provisions of the said Act of Assembly the Treasurer of Philadelphia County who issued the said license, and the complainant in this case, the recipient thereof, issued and received respectively said license in violation of the terms of said Act, which specifically provides that no such license might be issued to any corporation unless all of the officers and di-
[fol. 110] rectors of such corporation have been residents of the Commonwealth of Pennsylvania for a period of three years prior to application.

17. Defendants further aver that the Bill of Complaint is argumentative and multifarious in its various paragraphs,

Wherefore, the defendants pray that the temporary restraining order issued be dissolved, and that the Bill of Complaint be dismissed at the plaintiff's cost.

Charles J. Margiotti, Attorney General; Edward Friedman, Deputy Attorney General; Horace A. Segelbaum, Special Deputy Attorney General; Thomas I. Guerin, Special Deputy Attorney General, 1102 Finance Building, Philadelphia, Pa., Attorneys for Defendants Walter T. Grosscup, W. Worrell Wagner and Leo. A. Crossen, Constituting the Pennsylvania Liquor Control Board; Charles J. Margiotti, Attorney General of the Commonwealth of Pennsylvania; and George H. Earle, 3d, Governor of the Commonwealth of Pennsylvania.

[fol. 111] EXHIBIT "A" TO ANSWER

AN ACT

To reenact and amend the title and the act, approved the third day of May, one thousand nine hundred and thirty-

three (Pamphlet Laws, two hundred fifty-two), entitled "An act to regulate and restrain the traffic in malt, brewed, and vinous and fruit juice beverages, as herein defined; providing for the licensing of the sale and distribution of such beverages; imposing license fees, and providing for collection and distribution thereof; restricting ownership and interest in licensed places; permitting municipalities and townships, by vote of the electors, to prevent the licensing therein of places where such beverages may be sold for consumption on the premises, and regulating elections for this purpose; imposing duties upon county treasurers, the Department of Revenue, quarter sessions courts, district attorneys, proper authorities of political subdivisions of the State, and election officers; providing penalties; and repealing existing acts," as amended, by providing for the issue by the county treasurer of retail dispensers' licenses, and by the Pennsylvania Liquor Control Board of distributors', importing distributors', and manufacturers' licenses; regulating the business of manufacturers of malt and brewed beverages; and providing for the issue of public service licenses and special permits relating to entertainment and transportation for hire by said board; changing, fixing, and providing for the fixing of permit and license fees, and providing for the disposition thereof; providing for the abatement of nuisances; providing for the revocation and suspension of licenses by the court of quarter sessions and the board; further [fol. 112] regulating the manufacture, sale, transportation and traffic in malt and brewed beverages prescribing penalties; and repealing inconsistent acts.

Section 1. Be it enacted, &c., That the title of, and the entire act approved the third day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, two hundred fifty-two), entitled "An act to regulate and restrain the traffic in malt, brewed, and vinous and fruit juice beverages, as herein defined; providing for the licensing of the sale and distribution of such beverages; imposing license fees, and providing for collection and distribution thereof; restricting ownership and interest in licensed places; permitting municipalities and townships, by vote of the electors, to prevent the licensing therein of places where such beverages may be sold for consumption on the premises,

and regulating elections for this purpose; imposing duties upon county treasurers, the Department of Revenue, quarter sessions courts, district attorneys, proper authorities of political subdivisions of the State, and election officers; providing penalties; and repealing existing acts," as amended by the act approved the twentieth day of December, one thousand nine hundred and thirty-three (Pamphlet Laws, seventy-five—one thousand nine hundred thirty-three—one thousand nine hundred thirty-four), are hereby amended to read as follows:

AN ACT

To regulate and restrain the traffic in malt [liquors] *and brewed beverages,* as herein defined; providing for the licensing of the manufacture, transportation, sale and distribution of such [liquors] *beverages;* imposing license *and permit* fees, and providing for collection and dis- [fol. 113] tribution thereof; restricting ownership and interest in licensed places; permitting municipalities and townships, by vote of the electors, to prevent the licensing therein of places where such [liquors] *beverages* may be sold for consumption on the premises, and regulating elections for this purpose; imposing duties upon county treasurers [the Department of Revenue] *the Pennsylvania Liquor Control Board,* quarter sessions courts, district attorneys, *the Department of Justice,* proper authorities of political subdivisions of the State, and election officers; providing penalties; and repealing existing acts.

Section 1. Short Title.—This act shall be known, and may be cited, as the ["Malt Liquor License Law"] *"Beverage License Law."*

Section 2. Definitions.—The following words and terms, as used in this act, shall be construed as defined in this section:

(a) The term "malt [liquor"] *or brewed beverage"* means any beer, lager beer, ale, porter, or similar fermented malt liquor, containing one-half of one per centum or more of alcohol by volume, by whatever name such liquors may be called.

(b) The word "person" means and includes natural persons, associations, partnerships and corporations.

(c) The word "manufacturer" means and includes all persons [holding permits issued by the Pennsylvania Alcohol Permit Board or the Pennsylvania Liquor Control Board of this Commonwealth] *holding licenses issued by the board to engage in the manufacture, bottling, transportation, and sale of malt or brewed beverages.*

[fol. 114] (d) The term "distributor" means and includes persons licensed *by the board* to engage in the purchase, *only from Pennsylvania manufacturers and from importing distributors,* and *the* resale of malt [liquors] *or brewed beverages* in the original sealed packages, as prepared for the market by the manufacturer, but not for consumption on the premises where sold, *and in quantities of not less than two hundred eighty-eight fluid ounces.*

(e) The term "importing distributors" means and includes persons licensed by the board to engage in the purchase from manufacturers and other persons located outside this Commonwealth, and from persons licensed as manufacturers and distributors under this act, and the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturer, but not for consumption on the premises where sold, and in quantities of not less than two hundred eighty-two fluid ounces.

[(e)] *(f)* The term "retailer" means and includes persons licensed *by the treasurer* to engage in the retail sale of malt [liquors where the consumption thereof is upon the premises of such vendor, with the privilege of selling malt liquors to be carried from the premises by the purchaser thereof only, however, in the original containers] *or brewed beverages, classified and defined as follows:*

"Retail Dispenser" means and includes persons licensed to engage in the retail sale of malt or brewed beverages for consumption on the premises of such licensee, with the privilege of selling malt or brewed beverages in quantities not in excess of seventy-two fluid ounces in a single sale to one person, to be carried from the premises by the purchaser thereof.

[fol. 115] [(f)] *(g)* The term "original containers" means and includes bottles, casks, kegs or other suitable containers that have been securely capped, *sealed* or corked

by the manufacturer, with the name and address of the manufacturer permanently affixed to the bottle, cask, keg, or other container, or to the cap or cork used in sealing same, *or to a label securely affixed to a bottle.*

[(g)] (*h*) The term "license" means and includes both the person making the application therefor and the premises upon which the privileges of the license are to be exercised, and includes licenses issued under the provisions of this act.

[(h)] (*i*) "Eating place" means a [room] *premise* having [an] *a total* area of not less than three hundred square feet, *available to the public in one or more rooms other than living quarters,* and equipped with tables and chairs accommodating [forty] *thirty* persons at one time.

[(i)] (*j*) "Treasurer" means the county treasurer of the county in which is located any place specified in an application as the place for which a license is desired.

(*k*) *"Board" means the Pennsylvania Liquor Control Board of this Commonwealth.*

[(j)] (*l*) As used in this act, the singular shall include the plural, and the masculine gender shall include the feminine and neuter.

(*m*) *The term "manufacturer" shall mean and include all means, methods, and processes used, employed and made use of, to produce, make and manufacture for commercial purposes, malt or brewed beverages from raw materials.*

(*n*) *"Hotel" shall mean any reputable establishment* [fol. 116] *operated by responsible persons of good reputation where the public may, for a consideration, obtain sleeping accommodations and meals and which, in a city, has at least eight, and, in any other place, at least four permanent bedrooms for the use of guests, and a public dining room or eating place operated by the same management having a total area, in one or more rooms, of not less than three hundred square feet, and accommodating at least thirty persons at one time.*

Section 3. Sales for Consumption on the Premises.—It shall be unlawful for any person to sell to another for consumption upon the premises where sold, or to permit another to consume upon the premises where sold, any

malt [liquor] *or brewed beverages,* unless such [person] *vendor* holds a valid [malt liquor retail license] *retail dispenser license* issued under this act by the treasurer, or a valid license issued under any other act authorizing the sale of spirituous *and* vinous [and malt] liquors *and malt or brewed beverages* for consumption upon such premises.

Section 4. Sales Not for Consumption on the Premises.—It shall be unlawful for any person to sell to another, *except as herein otherwise provided in the case of retail dispensers or as may be otherwise authorized by law,* any malt [liquor] *or brewed beverages* not for consumption upon the premises where sold, unless such person holds a valid [manufacturer's permit issued by the Pennsylvania Alcohol Permit Board or the Pennsylvania Liquor Control Board or a valid distributor's or retailer's malt liquor license issued by the treasurer] *license issued under this act permitting such sale.*

Section 5. [Malt Liquor Distributors' Licenses.—The treasurer shall issue to any person who applies therefor, [fol. 117] pays the license fee hereinafter prescribed, and files the bond hereinafter required, a malt liquor distributor license for the place at which such person desires to sell malt liquors not for consumption on the premises where sold.]

Manufacturers', Distributors', and Importing Distributors' Licenses.

(a) It shall be unlawful for any person to manufacture malt or brewed beverages, unless such person holds a valid manufacturer's license issued by the board. The board shall issue to any person, a resident of this Commonwealth of good repute who applies therefor, pays the license fee hereinafter prescribed, and files the bond hereinafter required, a maufacturer's license to produce and manufacture malt or brewed beverages, and to transport, sell and deliver malt or brewed beverages at or from one or more places of manufacture or storage only in original packages in quantities of not less than two hundred eighty-eight fluid ounces, anywhere within the Commonwealth. Each individual applicant for a manufacturer's license and, in the case of partnerships and associations, each member thereof shall be a citizen of the United States and have been residents of this Commonwealth at least two years prior to the date

of their respective applications. In the case of corporations organized or registered under the laws of this Commonwealth, it must appear that all of the officers and directors and the owners of, at least, fifty-one per centum of the capital stock of the corporation are citizens of the United States and have, for a period of at least two years prior to the date of application, been residents of this Commonwealth. Licenses for places of storage shall be limited to those maintained by manufacturers at the effective date of this act, and thereafter the board shall issue [fol. 118] *no licenses for places of storage in addition to those maintained at the effective date of this act. The application for such license shall be in such form and contain such information as the board shall require. All such licenses shall be granted for the calendar year, and where a license runs for less than the full calendar year, the license fee shall be reduced one-twelfth for each full month such license was not in force during the calendar year. Every manufacturer shall keep, at his or its principal place of business within the Commonwealth, daily permanent records which shall show (a) the quantities of raw materials received and used in the manufacture of malt or brewed beverages, and the quantities of malt or brewed beverages manufactured and stored, (b) the sales of malt or brewed beverages, (c) the quantities of malt or brewed beverages stored for hire or transported for hire by or for the licensee, and (d) the names and addresses of the purchasers or other recipients thereof. Every place licensed as a manufacturer shall be subject to inspection by members of the board or by persons duly authorized and designated by the board, at any and all times of the day or night as they may deem necessary (a) for the detection of violations of this act or of the rules and regulations of the board, or (b) for the purpose of ascertaining the correctness of the records required to be kept by licensees. The books and records of such licensees shall, at all times, be open to inspection by members of the board or by persons duly authorized and designated by the board. Members of the board and its duly authorized agents shall have the right, without hindrance, to enter any place which is subject to inspection hereunder, or any place where such records are kept, for the purpose of making such inspections and making transcripts thereof.*

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[fol. 119]. *(b) The board shall issue to any reputable person who applies therefor, pays the license fee hereinafter prescribed, and files the bond hereinafter required, a distributor's or importing distributor's license for the place which such person desires to maintain for the sale of malt or brewed beverages, not for consumption on the premises where sold and in quantities of not less than two hundred eighty-eight fluid ounces and in original packages as prepared for the market by the manufacturer. Such licenses shall be issued only to reputable individuals, partnerships and associations who are, or whose members are, citizens of the United States and have for two years, prior to the date of their applications, been residents of the Commonwealth of Pennsylvania, or to reputable corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania. Such licenses shall be issued to corporations duly organized or registered under the laws of the Commonwealth of Pennsylvania only when it appears that all of the officers and directors of the corporation are citizens of the United States, and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, and that, at least, fifty-one per centum of the capital stock of such corporation is actually owned by individuals who are citizens of the United States and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application. Such license shall authorize the holder thereof to sell or deliver malt or brewed beverages in quantities of not less than two hundred eighty-eight fluid ounces anywhere within the Commonwealth of Pennsylvania which, in the case of distributors, have been purchased only from persons licensed under this act and, in the case of importing distributors, have been* [fol. 120] *purchased from manufacturers and persons outside this Commonwealth or from persons licensed under this act.*

Section 6. Malt [Liquor] *and Brewed Beverage* Retailers' Licenses.—*(a)* Subject to the restrictions hereinafter provided, the treasurer shall issue to a person who conducts a reputable hotel, or any *reputable* incorporated club, [whatever] or a reputable bona fide eating place where food is regularly and customarily prepared and sold, and who makes application upon a form as hereinafter pre-

scribed, pays the license fee hereinafter prescribed, and files the bond hereinafter required, a [malt liquor retailer] *retailer dispensers* license for such place.

Such licenses shall be issued only to reputable persons who are citizens of the United States and have for two years been residents of the Commonwealth of Pennsylvania at the date of their application, or to reputable corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania all of whose officers and directors are citizens of the United States.

No [malt liquor retailer] *retail dispensers* license shall be granted [for the sale of malt liquors for consumption on the premises] in any municipality or township in which the electors shall, as hereinafter provided, have voted against the licensing therein of places where malt [liquors] *or brewed beverages* may be sold for consumption on the premises where sold.

Section 7. Appeals from Refusal of Licenses.—Any person aggrieved by the [treasurer's] refusal *of the board or treasurer* to issue a license may appeal to the court of quarter sessions of the county *in which the premises applied for are located within twenty days of date of refusal.* [fol. 121] Such appeal shall be upon petition of the applicant, who shall serve a copy thereof upon the [treasurer] *board or treasurer,* whereupon a hearing shall be held upon said petition by the court upon thirty days' notice to the [treasurer, who] *board or treasurer, which* shall be represented in the proceeding by the [district attorney] *Department of Justice or the district attorney as the case may be.* At said hearing, testimony may be presented by the applicant and the [treasurer] *board or treasurer,* after the consideration of which, the court shall either sustain the refusal of the [treasurer] *board or treasurer* or order an issuance of the license to the applicant. There shall be no further appeal.

Section 8. Public Service [Malt Liquor] Licenses.—The [Department of Revenue] *board* may issue public service malt [liquor] *and brewed beverage* licenses to a railroad, pullman or steamship company, permitting malt [liquors] *or brewed beverages* to be sold at retail in dining, club or buffet cars, or the dining compartments of steamships or vessels, for consumption on the train, steamships or vessels wherever operated in the State, except when standing

in stations or terminals within a municipality wherein retail sales are prohibited. Such licenses shall only be granted to reputable persons and for fit places. *The board may issue a master license to railroad or pullman companies to cover the maximum number of cars which the company shall estimate that it will operate within the Commonwealth on any one day. Such licensees shall file monthly reports with the board showing the maximum number of cars operating at any time on any day during the preceding month and, if it appears that more cars have been operated than covered by its license, it shall forthwith remit to the board the sum of ten dollars for each extra* [fol. 122] *car so operated.* The [Department of Revenue] *board* shall have the power to suspend or revoke any such licenses for cause, after granting a hearing thereon to the licensee. Any person aggrieved by the decision of the [Department of Revenue,] *board,* in refusing, suspending or revoking any such license, may, within [thirty] *twenty* days thereafter, appeal to the court of common pleas of Dauphin County, which shall fix a time for hearing, of which notice shall be given to the [Department of Revenue] *board* as the court may provide. The court shall hear the appeal de novo, and shall make such order affirming, modifying or reversing the order of the [department] *board* as to it shall appear just. The action of the court shall be final.

Section 9. [Malt Liquor] License Year; Mercantile License Exemption.—(*a*) Licenses issued under this act to distributors, *importing distributors,* [retailers, and public service companies] *and retail dispensers licensees* shall, unless revoked in the manner provided in this act, be valid for the [malt liquor] license year [for which they are issued. The malt liquor license year shall begin on June first in each calendar year. Licenses may be issued at any time during a malt liquor license year] *which, in the case of retail dispensers, shall begin on the first day of June of each year, and, in the case of distributors, and importing distributors, shall be for such license year as may be established by the board for the particular district in which the license issues. Retail dispenser's licenses may be issued at any time during the license year.*

(b) *Licenses issued under this act to manufacturers and public service companies shall, unless revoked in the manner provided in this act, be valid for the calendar year for which* [fol. 123] *they are issued. Licenses to manufacturers and public service companies may be issued at any time during a calendar year.*

No licensee under this act shall be required to obtain any mercantile license whatsoever to sell malt [liquors] *or brewed beverages,* and every licensee under this act, who is also the holder of a mercantile license, may deduct the gross income received from sales of malt [liquors] *or brewed beverages* from his gross income from all sources in making his returns for mercantile license tax purposes.

Section 10. Filing of Applications for Distributors', *Importing Distributors'* and Retailers' Licenses.—Every person intending to apply for a distributor's, *importing distributor's or* [or retailer's] *retail dispenser* license as aforesaid, in any municipality or township of this Commonwealth, shall file, with the [treasurer,] *board or treasurer, as the case may be,* his or its application. *In the case of distributors and importing distributors applications shall be filed at a time to be fixed by the board for the particular license district as set up by the board, under the provisions of the Pennsylvania Liquor Control Act.* [and, at the same time,] *The applicant shall at the time of filing the application* pay said [treasurer] *board or treasurer, as the case may be,* [a] *the* filing fee of ten dollars [for the use of the county] *as specified in this act.*

Section 11. Application for Distributors' *Importing Distributor's* and Retailers' Licenses.—Application for distributors', *importing distributors'* and retailers' [malt liquor] licenses shall contain *the following information and statements—*

[fol. 124] (a) The name and residence of the applicant, and how long he has resided there; [and if an individual the residence of such applicant,] and if an association, partnership or corporation the residences of the members, officers and directors, for the period of two years next preceding the date of such application;

(b) The particular place for which the license is desired, and a detailed description thereof;

(c) Place of birth of applicant, and if a naturalized citizen where and when naturalized; and if a corporation *organized and registered under the laws of the Commonwealth,* when and where incorporated, with the names and addresses of each officer and director; *if the application is for a distributor's, importing distributor's license, and the applicant therefor is a corporation, the application shall also contain a statement that all of the officers and directors are citizens of the United States, have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, and the further statement that at least fifty-one per centum of the capital stock of the corporation is actually owned by individuals who are citizens of the United States and who have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, together with the names and addresses of all stockholders;*

(d) Name of owner of premises, and his residence;

(e) That the applicant is not, or in case of a partnership or association that the members or partners are not, and in the case of a corporation that the officers and directors are not, in any manner pecuniarily interested, either directly or indirectly, in the profits of any other class of business regulated under this act, except as hereinafter [temporarily] permitted;

[fol. 125] (f) That applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed, and that no other person shall be in any manner pecuniarily interested therein during the continuance of the license, except as hereinafter [temporarily] permitted;

(g) Whether applicant, or in case of a partnership or association any member or partner thereof, or in case of a corporation any officer or director thereof, has, during the three years immediately preceding the date of said application, had a license for the sale of malt [liquors] *or brewed beverages* or spirituous and vinous liquors revoked, or has, during the same period, been convicted of any criminal offense, and, if so, a detailed history thereof;

(h) A full description of that portion of the premises for which license is asked, and, if any other business is to be

conducted concurrently with the sale and distribution of malt [liquors] *or brewed beverages,* a full history of such business, relating the nature thereof, the length of time it has so previously been conducted by the applicant, or his predecessor, at such location;

(*i*) *Every club applicant shall file, with and as a part of its application, a list of the names and addresses of its members, directors, officers, agents and employes, together with the dates of their admission, election or employment, and such other information with respect to its affairs as the board shall require. The treasurer shall refuse to issue licenses to clubs when it appears that the operation of the club license would inure to the benefit of individual mem-* [fol. 126] *bers, officers, agents or employes of the club rather than to the benefit of the entire membership of the club.*

There shall be annexed to such application a certificate, signed by at least twelve reputable qualified electors of the ward, borough or township in which such malt [liquors] *or brewed beverages* are to be sold, setting forth that they have been acquainted with the applicant or applicants, or the members of the association or partnership, or the directors and officers of the corporation where the applicant is a corporation, that they have good reason to believe that each and all the statements contained in the petition are true, and they therefore believe that the application should be granted and that the license should issue.

The application must be verified by affidavit of applicant, and if any false statement is *intentionally* made in any part of the application, the affiant shall be deemed guilty of the crime of perjury. A license shall not be granted by the [treasurer] *board or treasurer, as the case may be,* unless the application contains the information herein required, *and the premises meet such reasonable sanitary requirements as the board by regulation shall prescribe.*

Section 12. Prohibitions Against the Grant of Licenses.—(*a*) Any retailer *dispenser* may be granted licenses to maintain, operate or conduct any number of places for the sale of malt [liquors] *or brewed beverages,* but a separate license must be secured for each place where malt [liquors] *or brewed beverages* are sold [or where orders are taken].

(*b*) No person shall possess or be issued more than one distributor's, *importing distributor's* license; [in any one

[fol. 127] municipality or township, nor shall any] *no person shall possess or be issued more than one class of license. No* distributor *or importing distributor shall* maintain or operate any place [or places] *where sales are made* other than that for which the license is granted [where malt liquors are sold or where orders are taken]. *No distributor or importing distributor shall maintain any place for the storage of malt or brewed beverages unless the same has been approved by the board. No distributor's or importing distributor's license shall be issued for any premises in any part of which there is operated any retail license for the sale of liquor or malt or brewed beverages.*

(*c*) Licenses shall be granted by the [treasurer] *board or treasurer* only to reputable individuals, or to associations, partnerships and corporations whose members or officers and directors are reputable individuals.

[Licenses shall be granted by the treasurer only to individual citizens of the United States who have been residents of this Commonwealth for at least three years immediately preceding, or to corporations organized in or duly authorized to transact business in this Commonwealth and all of whose officers and directors shall be citizens of the United States who have also been residents of this Commonwealth for at least three years immediately preceding, the applications for license.]

A [malt liquor] retail *dispenser* license shall not be issued to any individual unless such individual, for one year immediately preceding the date of his application, has been a resident of the county wherein his place of business is or is to be located.

Section 13. Revocation and Suspension of Licenses [by Court of Quarter Sessions].—(*a*) After a license has been [fol. 128] granted *by the treasurer,* upon petition of the Attorney General, *the board,* the treasurer, the district attorney, or fifteen or more taxpayers, residents of the ward, borough or township where the place of business is located, to the court of quarter sessions, and upon sufficient cause being shown or proof being made to the court that the licensee holding a license, or any partners, members, officers or directors of the licensee, has or have violated any of the laws of this Commonwealth relating to the sale of malt [liquors] *or brewed beverages,* or relating to the manufacture, sale or transportation of alcohol or other alcoholic

beverages, it may, upon due notice and proper hearing being given to the person so licensed, suspend or revoke the said *retail* license issued by the treasurer. The court shall assess or remit the costs in its discretion. [The action of the court in suspending or revoking a license shall be final.]

Any licensee whose *retail* license is revoked shall be ineligible to have a license or permit under this act, or under another act relating to the manufacture, sale or distribution of malt liquor or other alcoholic liquors, until the expiration of [five] *three* years from the date his license was revoked.

(b) The board upon sufficient cause being shown or proof being made that any licensee holding a license issued by the board, or any partners, members, officers or directors of the licensee has or have violated any of the laws of this Commonwealth relating to the manufacture, sale, possession or transportation of malt or brewed beverages, alcohol or other alcoholic beverages may, upon due notice and proper hearing being given to the person so licensed, suspend or [fol. 129] *revoke the license issued by the board under the provisions of this act. In all cases where the board shall suspend or revoke a license, it shall set forth its finding of fact, the evidence from which such findings of fact are made, and the reasons upon which its action is based. Any licensee whose license is revoked by the board shall be ineligible to have a license under this act or under any other act of the Commonwealth of Pennsylvania relating to the manufacture, transportation or sale of liquor or malt or brewed beverages until the expiration of three years from the date such license was revoked. In the event the board shall revoke a license, no license shall be granted for the premises in which the said license was conducted for a period of at least one year after the date of the revocation of the license conducted in the said premises. Any person aggrieved by the suspension or revocation of a license issued by the board under this act may, within twenty days after such suspension or revocation, appeal to the court of quarter sessions of the county in which the premises in which said license was conducted are located. Such appeal shall be upon the petition of the person aggrieved who shall serve a copy thereof upon the board, whereupon a hearing shall be held upon the petition by the court after ten days notice to the board which shall be represented in the pro-*

ceedings by the Department of Justice. At such hearing, testimony may be presented by the applicant and the board, after the consideration of which the court shall either sustain the suspension or revocation of the license, modify or reverse the order of the board. In all such cases of appeal, the court of quarter sessions shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order.

[fol. 130] *(c) Any person aggrieved by the action of the court of quarter sessions shall have the right to appeal to the Superior Court. The Superior Court shall examine the record upon which such appeal is based and shall determine whether or not the action of the court of quarter sessions was properly based upon the evidence presented to it. The action of the Superior Court shall be final.*

Section 14. Licenses Not Assignable; Transfers.—*(a)* Licenses issued under this act may not be assigned. The [treasurer] *board or treasurer, as the case may be,* is hereby authorized to transfer any [distributor's or retailer's malt liquor] license *issued by it or him* from one person to another, or from one place to another, *or both,* within the same municipality or township, as the [treasurer] *board or treasurer* may determine; but no transfer shall be made to a person who would not have been eligible to receive the license originally, nor for the transaction of business at a place for which the license could not lawfully have been issued originally, [Any such transfer of a license may be made at any time] *or to a place as to which a license has been revoked within one year of the date of application. Except in cases of emergency, such as death, serious illness, or circumstances beyond the control of the licensee as the board or treasurer may determine such circumstances to justify its or his action, transfers of licenses may be made only at times fixed by the board or the treasurer.* From any refusal to grant a transfer, the person aggrieved shall have the right to appeal to the court of quarter sessions *in which the licensed premises are situated* in the same manner as herein provided for appeals from refusals to grant licenses.

[fol. 131] *(b) In the event that any person to whom a license shall have been issued under the terms of this act by the board shall become insolvent, make an assignment for*

the benefit of creditors, become a bankrupt by either voluntary or involuntary action, or shall have a receiver appointed by any court whether by voluntary or involuntary action, the license of such person shall immediately terminate and be cancelled without any action on the part of the board, and there shall be no refund made or credit given for the unused portion of the license fee for the remainder of the license year for which said license was granted. Thereafter, no license shall be issued by the board for the premises wherein said license was conducted to any assignee, committee, trustee, receiver or successor of such licensee until a hearing has been held by the board as in the case of a new application for license. In all such cases, the board shall have the sole and final discretion as to the propriety of the issuance of a license for such premises and as to the time it shall issue and the period for which it shall be issued, and shall have the further power to exact conditions under which said license shall be conducted.

Section 15. Applications for Transfers; Fee.—[Applications for any such transfer shall be filed in the office of the county treasurer at least one week before the transfer is made.] *Every applicant for a transfer of a license shall file a written application with the board or treasurer, as the case may be, in such form as the board or treasurer shall prescribe and at such time as the board or treasurer shall fix.*

Whenever any license is transferred, no license or other fees shall be required from the persons to whom such [fol. 132] transfer is made for the balance of the then current license year, except [a fee of ten dollars to be paid to the treasurer, for the use of the county] *a filing fee of ten dollars* ($10).

Section 16. Renewal of Licenses.—[Renewals of licenses shall be granted annually by the treasurer upon the filing of an application, as hereinbefore provided, and the payment of a fee of ten dollars for the use of the county, and the payment of the license fee and the filing of a bond as in the case of an original license.]

All applicant-s for renewal of licenses shall be filed at least sixty days before the expiration date of same and not thereafter. Unless, within one month of the date of filing of such application for renewal, the applicant shall have been notified by the board or treasurer, as the

case may be, of objections to the granting thereof filed by persons authorized so to do, upon the payment of the license fee and the filing of a bond as in the case of an original application for license, the board or treasurer shall issue such renewal of license. Objections to the granting of the renewal of the license shall be limited to those filed by persons authorized to file petitions for the revocation or suspension of licenses as provided in section thirteen hereof.

Section 17. Display of License.—Every licensee shall frame his or its license under a transparent substance, and display the same in a conspicuous space so that it may easily be read in his or its place of business; and no license shall authorize sales until this section has been complied with.

Section 18. All Licensees to Furnish Bond.—No license [fol. 133] shall be issued to any *manufacturer,* distributor, *importing distributor* or retailer, or *to any* railroad, pullman or steamship company, until the licensee shall have first executed a bond to the Commonwealth of Pennsylvania, and a warrant of attorney to confess judgment, in the penal sum hereinafter prescribed. [and with] *Bonds of all applicants except manufacturer's shall have* sufficient sureties, either personal or a surety company authorized to do business in this Commonwealth. *Bonds with personal surety shall be executed by not less nor more than two individuals as sureties, each of whom shall own real estate of an assessed valuation over and above all encumbrances and outstanding liabilities of two thousand dollars ($2000) or more. Bonds of manufacturers shall have as surety a surety company authorized to do business in this Commonwealth.* Such bonds shall not be accepted until approved by the [treasurer in the case of licenses issued to retailers and distributors, and by the Department of Revenue in the case of licenses issued to railroad, pullman or steamship companies] *board or treasurer, as the case may be.* All such bonds shall be conditioned for the faithful observance of all the laws of this Commonwealth relating to the [sale of beverages, or relating to] the manufacture, sale, *possession* or transportion *of malt or brewed beverages* [of] *or* alcohol or any other alcoholic beverages. [Such] *All* bonds shall be filed with and retained by the *board or treasurer,*

as the case may be. [treasurer in the case of licenses issued to retailers and distributors, and by the Department of Revenue in the case of licenses issued to railroad, pullman or steamship companies. The penal sums of such bonds filed by a distributor or retailer shall be one thousand dollars for each place at which the licensee is au- [fol. 134] thorized to sell beverages. The penal sums of such bonds filed by railroad, pullman or steamship companies shall be one thousand dollars, irrespective of the number of licensed cars or ships operated by such companies.] *The penal sum of bonds filed by the manufacturers shall be ten thousand* ($10,000.00) *dollars for each place at which the licensee is authorized to manufacture. The penal sum of bonds filed by distributors shall be one thousand* ($1,000.00) *dollars and for importing distributors two thousand* ($2,000.00) *dollars. The penal sum of bonds filed by all other licensees shall be one thousand* ($1,000.00) *dollars for each place at which the licensee is authorized to sell malt or brewed beverages except that in the case of railroad, pullman or steamship companies the penal sum of the bond to be filed shall be one thousand* ($1,000.00) *dollars irrespective of the number of licensed cars or ships operated by such companies.* Every such bond *may be forfeited when a license is revoked and* shall be turned over to the district attorney, or the Attorney General, as the case may be, to be sued out *for collection*, if, and when, the licensee's license shall have been revoked *and his bond forfeited* as herein provided.

Section 19. License Fees; Distribution of Revenues.—No license shall be issued to any *manufacturer*, distributor, *importing distributor* or [retailer] *retail dispenser* until the licensee shall have first paid an annual license fee for such grant, as follows:

[(a) In the case of a distributor, the license fee shall be graduated according to the population of the municipality or township in which the place of business is located as follows, and shall be paid to the treasurer:

[fol. 135] I. In municipalities or townships having a population of less than one thousand five hundred inhabitants, thirty-seven dollars and fifty cents.

II. In those having a population of one thousand five hundred and more, but less than ten thousand inhabitants — fifty dollars.

III. In those having a population of ten thousand and more, but less than fifty thousand inhabitants, seventy-five dollars.

IV. In those having a population of fifty thousand and more, but less than one hundred thousand inhabitants, one hundred dollars.

V. In those having a population of one hundred thousand and more, but less than one hundred fifty thousand inhabitants, one hundred and twenty-five dollars.

VI. In those having a population of one hundred fifty thousand and more, one hundred and fifty dollars.

(b) In the case of a retailer, the license fee shall be graduated according to the population of the municipal unit in which the place of business is located as follows, and shall be paid to the treasurer:

I. In municipalities or townships having a population of less than one thousand five hundred inhabitants, seventy-five dollars.

II. In those having a population of one thousand five [fol. 136] hundred and more, but less than ten thousand inhabitants, one hundred dollars.

III. In those having a population of ten thousand and more, but less than fifty thousand inhabitants, one hundred and fifty dollars.

IV. In those having a population of fifty thousand and more, but less than one hundred thousand inhabitants, two hundred dollars.

V. In those having a population of one hundred thousand and more, but less than one hundred fifty thousand inhabitants, two hundred and fifty dollars.

VI. In those having a population of one hundred fifty thousand and more, three hundred dollars.

(c) In the case of an incorporated club, the fee shall be twenty-five dollars in all cases.

(d) In the case of a public service license for the sale of malt liquors in dining, club and buffet cars, the fee shall be ten dollars for each car on which malt liquors are sold, and shall be paid to the State Treasurer through the Department of Revenue.

(e) In the case of a public service license for the sale of malt liquors on a boat or vessel, the fee shall be fifty dollars for each such vessel or boat, which shall be paid to the State Treasurer through the Department of Revenue.

(f) The fees for distributor, retail, and public service company malt liquor licenses when applied for and issued on or after—

[fol. 137] September first, but prior to December first, shall be three-fourths of the annual fee.

December first, but prior to March first of the succeeding year, shall be one-half of the annual fee.

March first, but prior to June first, one-fourth of the annual fee.

The license fees fixed by this section shall be paid before the license or renewal is issued.

The fees for distributors' and retailers' malt liquor licenses shall be paid by the treasurer to the municipalities and townships in which the licensed places are located, for the use of such municipalities and townships. The fees for public service malt liquor licenses shall be for the use of the Commonwealth.

Remittances shall be made by the treasurer to municipalities and townships within thirty days of the receipt of any license fee.]

(a) In the case of a manufacturer, the license fee shall be one thousand ($1,000.00) *dollars for each place of manufacture, and shall be paid to the board.*

(b) In the case of a distributor, the license fee shall be four hundred ($400.00) *dollars, and shall be paid to the board.*

(c) In the case of an importing distributor, the license fee shall be nine hundred dollars ($900.00), *and shall be paid to the board.*

[fol. 138] *(d) In the case of a retail dispenser, the license fee shall be graduated according to the population of the*

municipal unit or township in which the place of business is located, and shall be paid to the treasurer as follows:

	Retail dispenser
(a) Less than 10,000	$100
(b) 10,000 *and more, but less than* 50,000	150
(c) 50,000 *and more, but less than* 100,000	200
(d) 100,000 *and more, but less than* 150,000	250
(e) 150,000 *and more*	300

(d) In the case of an incorporated club, the fee shall be twenty-five dollars in all cases, and shall be paid to the treasurer.

(e) In the case of a public service license for cars, the fee shall be ten dollars per car for the maximum number of cars operated on any one day on which malt or brewed beverages are sold, to be paid to the board.

(f) In the case of a public service license for the sale of malt or brewed beverages on a boat or vessel, the fee shall be fifty dollars for each such vessel or boat, and shall be paid to the board.

(g) The fee for filing applications for licenses and for renewals shall be ten dollars which, together with fees for transfers, shall be paid to the board or treasurer issuing the licenses.

(h) The license fees fixed by this section shall be paid before the license or renewal is issued.

[fol. 139] *(i) The license fees for manufacturers, distributors, importing distributors and public service licenses, and all filing fees for such licenses and all permit fees shall be transmitted to the State Treasurer by the board, and shall be paid into the State Stores Fund. Fees paid for retail dispensers licenses shall be paid by the treasurer to the municipalities and townships in which the licensed places are located. Filing fees collected by the treasurer shall be for the use of the county.*

Section 20. Sales by Manufacturers; Minimum Quantities.—No manufacturer shall sell any malt [liquors] *or brewed beverages* for consumption on the premises where sold, nor sell or deliver any such malt [liquors] *or brewed beverages* in other than original containers, *approved as to*

capacity by the board, nor in quantities of less than two hundred and eighty-eight (288) fluid ounces; nor shall any manufacturer maintain or operate *within the Commonwealth* any place or places, other than the place or places covered by his or its [permit] *license, where malt* [liquors] *or brewed beverages* are sold or where orders are taken.

Section 21. Sales by Distributors *and Importing Distributors.*—No distributor or *importing distributor* shall purchase, receive or resell any malt [liquors] *or brewed beverages* except in the original containers, *as prepared for the market by the manufacturer. No distributor or importing distributor shall sell any malt or brewed beverages in quantities of less than two hundred eighty-eight fluid ounces:* Provided, That no malt [liquors] *or brewed beverages* sold or delivered shall be consumed upon the premises of the distributor *or importing distributor* or in any place provided for such purpose by such distributor *or importing distributor.*

[fol. 140] Section 22. Sales by Retailers.—No retailer shall purchase or receive any malt [liquors] *or brewed beverages* except in original containers, [and, thereafter, may] *as prepared for the market by the manufacturer. The retail dispenser may thereafter* break the bulk upon the licensed premises and sell or dispense the same for [use and] consumption [only, however, in and upon the premises so licensed: Provided, however, That such retailer may sell such malt liquor in the original containers to be carried from the premises by the purchaser thereof] *on or off the premises so licensed: Provided, however, That no retail dispenser may sell malt or brewed beverages for consumption off the premises in quantities in excess of seventy-two fluid ounces, or deliver malt or brewed beverages to any point away from his licensed premises. And, provided further, That no club licensee may sell any beverages for consumption off the premises where sold.*

No retailer shall [maintain any bar at which malt liquors are served to customers, or] sell any malt [liquors] *or brewed beverages* for consumption on the licensed premises except in a room or rooms or place on the licensed premises at all times [visible and] accessible to the use and accommodation of the general public; but this section shall not be interpreted to prohibit [the sale of malt liquors at a

lunch counter with seats or chairs permanently fastened thereto, if such counter is in an eating place as herein defined. A retailer licensed to sell] *a retail licensee from selling* malt [liquors] *or brewed beverages* in a hotel or club house [may, however, sell and deliver such malt liquors] [fol. 141] in any room of such hotel or club house occupied by a bona fide registered guest or member entitled to purchase the same.

Section 23. Unlawful [Sales] *Acts.*—It shall be unlawful [for any licensee, or his or its servants, agents or employes —(a) To sell, trade or barter in malt liquors between the hours of twelve o'clock midnight of any Saturday and six o'clock in the forenoon of the following Monday.

(b) To sell, furnish or give any malt liquors to any person visibly intoxicated, or to any insane person, or to any minor.

(c) To sell, furnish or give any malt liquors to any person on any day on which a general, municipal, special or primary election is being held.

(d) In the case of retailers, to sell, or offer to sell, any malt liquors for consumption on the premises where sold to any person on credit, excepting credits extended by a hotel or club to a bona fide registered guest or member. No right of action shall exist to collect any claims for credit extended contrary to the provisions of this clause.

(e) To sell, offer to sell, or furnish any malt liquor to any person on a pass-book or store order, or to receive from any person any goods, wares, merchandise, or other articles in exchange for malt liquors.

(f) To hawk or peddle any malt liquors in this Commonwealth.

(g) To manufacture, import, sell, trade or barter in any [fol. 142] spirituous, vinous or other alcoholic liquors, except malt liquors.]

(a) For any manufacturer, importing distributor, or distributor or the servants, agents or employes of the same to sell, trade or barter in malt or brewed beverages between the hours of twelve o'clock midnight of any Saturday and two o'clock in the forenoon of the following Monday.

(b) For any hotel, restaurant or public service licensee or the servants, agents or employes of such licensees to sell, trade or barter in beverages between the hours of twelve o'clock midnight of any Saturday and seven o'clock in the forenoon of the following Monday, or between the hours of two o'clock antemeridian and seven o'clock antemeridian of any day.

(c) For any licensee to sell, furnish or give any beverages to any person visibly intoxicated, or to any insane person, or to any minor, or to habitual drunkards, or persons of known intemperate habits.

(d) For any hotel, restaurant or public service licensee to sell, furnish or give any malt or brewed beverages to any person until one hour after the time fixed by law for the closing of polling places on days on which a general, municipal, special or primary election is being held.

(e) For any licensee to sell, or offer to sell, or purchase or receive, any malt or brewed beverages except for cash, excepting credits extended by a hotel or club to bona fide registered guests or members. No right of action shall exist to collect any claims for credit extended contrary to the [fol. 143] *provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by such purchaser for containers, or as a deposit on containers when title is retained by the vendor if such containers or packages have been returned to the manufacturer, distributor, importing distributor or other vendor. Nothing herein contained shall prohibit a manufacturer from extending usual and customary credit for malt or brewed beverages sold to customers or purchasers who live or maintain places of business outside of the Commonwealth of Pennsylvania, when the beverages so sold are actually transported and delivered to points outside of the Commonwealth.*

(f) For any licensee to sell, offer to sell, or furnish any beverage to any person on a pass book or store order, or to receive from any person any goods, wares, merchandise or other articles except containers returned in exchange for malt or brewed beverages.

(g) For any licensee, except a manufacturer on his own premises, to advertise on the outside of any licensed premises, or on any lot of ground on which licensed premises are situate, or on any building of which the licensed premises are a part, any beverages by trade name, trade-mark or in any manner which would indicate the manufacturer, producer or place of manufacture or production of any beverage, unless the actual value of such advertising device shall be not more than seventy-five dollars ($75.00).

[fol. 144] *(h) For any manufacturer, importing distributor or distributor to give, furnish or sell, or for any other licensee to lease, purchase or receive for display or to display on the inside of any licensed premises any advertising matter indicating the trade-mark or trade name of any particular beverage or the manufacturer, producer or place of manufacture or production of any beverage unless the actual value of such advertising device shall not exceed twenty-five dollars.*

(i) For any licensee to advertise, or hold out for sale, any malt or brewed beverage by trade name or other designation which would indicate the manufacturer or place of production of the said beverage, unless he shall actually have on hand and for sale a sufficient quantity of the particular beverage so advertised to meet requirements to be normally expected as a result of such advertisement or offer.

(j) For any retail dispenser to furnish or serve any malt or brewed beverages from any faucet, spigot or other dispensing apparatus, unless the trade name or brand of the product served shall appear in full sight of the customer and in legible lettering upon such faucet, spigot or dispensing apparatus.

(k) For any licensee or his or its servants, agents or employes to transport, sell, deliver or purchase any malt or brewed beverage upon which there shall appear a label or other informative data which, in any manner, refers to the alcoholic contents of the malt or brewed beverage or which refers, in any manner, to the original alcoholic strength, extract or balling proof from which such bevearge was produced. This clause shall not be construed to prohibit a

[fol. 145] *manufacturer from designating, upon the label or descriptive data, the alcoholic contents of malt or brewed beverages intended for shipment into another state or territory when the laws of such state or territory require that the alcoholic content of the malt or brewed beverage must be stated upon the package.*

(l) For any retail licensees, except clubs, to permit in any licensed premises, dancing, theatricals, floor show or moving picture exhibitions of any sort, unless the licensee shall have first received from the board a special permit to provide such entertainment, or for any retail licensee under any circumstances to permit in any licensed premises, any lewd, immoral or improper entertainment regardless of whether or not a permit to provide entertainment has been obtained. The board shall have power to provide for the issue of such special permits and to require a fee of twenty-five dollars for permits authorizing theatricals, floor shows or moving picture exhibitions. All such fees shall be paid into the State Stores Fund.

(m) For any "distributor" or importing distributor, without the approval of the board, to engage on the licensed premises in any other business whatsoever except the business of distributing malt or brewed beverages or non-intoxicating beverages.

(n) For any distributor, importing distributor, retailer to have in his possession on any licensed premises, or to permit the storage on the licensed premises, of any spirituous, vinous or alcoholic liquors or alcohol of any sort except malt or brewed beverages.

(o) For any licensee to manufacture, import, sell, trade [fol. 146] *or barter in any spirituous, vinous or other alcoholic liquors or alcohol except malt or brewed beverages.*

(p) For any licensee to issue, publish or post or cause to be issued, published or posted any advertisement of a malt or brewed beverage including a label which shall refer in any manner to the alcoholic strength of the malt or brewed beverages manufactured, sold or distributed by such licensees, or to use in any advertisement or label such words as "full strength," "extra strength," "high test," "high proof," "pre-war strength" or similar words or phrases which would lead or induce a consumer to purchase a brand

of malt or brewed beverage on the basis of its alcoholic content, or to use in or on any advertisement or label any numeral unless adequately explained in type of the same size prominence and color, or for any licensee to purchase, transport, sell or distribute any malt or brewed beverage advertised or labeled contrary to the provisions of this clause.

(q) For any licensee or any agent, employe or representative of any licensee to give or permit to be given, directly or indirectly, money or anything of substantial value in an effort to induce agents, employes or representatives of customers or prospective customers to influence their employers or principals to purchase or contract to purchase malt or brewed beverages from the donor of such gift or to influence such employers or principals to refrain from dealing or contracting to deal with other licensees.

(r) For any licensee to offer or give any prize, premium, gift or other similar inducement to either trade or consumer [fol. 147] *buyers except advertising novelties of nominal value which the board shall define.*

(s) For any licensee to offer, pay, make or allow, or for any licensee to solicit or receive, any allowance or rebate, refunds or concessions whether in the form of money or otherwise to induce the purchase of malt or brewed beverages manufactured or sold by the licensee.

(t) For any licensee to fail to keep, for a period of at least two years, complete and truthful records covering the operation of his license and particularly showing the date of all purchases of malt or brewed beverages, the actual price paid therefor and the name of the vendor, or to refuse the board or an authorized employe of the board access thereto or the opportunity to make copies of the same when the request is made during business hours.

(u) For any licensee to refuse the board, or any of its authorized employes, the right to completely inspect the entire licensed premises at any time during which the premises are open for the transaction of business.

(v) For any retail dispenser to furnish, give, or sell below a fair cost any lunch to any consumer except such articles of food as the board may authorize and approve.

(w) For any person to hawk or peddle malt or brewed beverages or to distribute malt or brewed beverages unless an order therefor has been previously received.

(x) For any licensee to be, directly or indirectly, employed by any other licensee engaged in the manufacture, storage, transportation or sale of spirituous or vinous liquors, alcohol or malt or brewed beverages.

[fol. 148] *(y) For any licensee to knowingly sell any malt or brewed beverages to any person engaged in the business of illegally selling liquor or malt or brewed beverdges.*

(z) For any person to transport or import any malt or brewed beverages into this Commonwealth, except in accordance with the rules and regulations of the board, or for any person to transport malt or brewed beverages into or within this Commonwealth unless there shall be affixed to the original containers in which such malt or brewed beverages are transported stamps or crowns evidencing the payment of the malt liquor tax to the Commonwealth: Provided, however, That this clause shall not be construed to prohibit transportation of malt or brewed beverages through this Commonwealth and not for delivery therein if such transporting is done in accordance with the rules and regulations of the board.

Section 24. Things of Value Not to Be Offered [for the Return of Certain Articles].—It shall be unlawful for any person licensed to sell malt [liquors] *or brewed beverages* to offer or give anything of value as a premium for the return of caps, stoppers, corks, stamps or labels taken from any bottle, case, barrel or package containing such malt [liquors] *or brewed beverages,* or to offer or give anything of value as a premium or present to induce the purchase of such malt [liquors] *or brewed beverages* or for any other purpose whatsoever in connection with the sale of such malt [liquors] *or brewed beverages:* Provided, however, That this section shall not apply to the return of any moneys specifically deposited for the return of the original containers to the owners thereof.

Section 25. Unlawful to Fortify, Adulterate, or Contaminate Malt [Liquors] *or Brewed Beverages.*—It shall be [fol. 149] unlawful to fortify, adulterate, contaminate, or in any wise to change the character or purity of the malt

[liquors] *or brewed beverages* from that as originally marketed by the manufacturer.

Section 26. Transportation in Original Packages.—It shall be unlawful *for any licensee or transporter for hire* to transport any malt [liquors] *or brewed beverages* except in the original containers. *It shall be unlawful for any transporter for hire to transport any malt or brewed beverages within this Commonwealth unless such transporter shall hold a permit issued by the board and shall have paid to the board such permit fee, not exceeding one hundred dollars, and shall have filed with the board a bond in the penal sum of not more than two thousand dollars as may be fixed by the rules and regulations of the board, any other law to the contrary notwithstanding.*

Section 27. Delivery Vehicles to Bear Name and Address of Distributor, *Importing Distributor* or Manufacturer.—It shall be unlawful for a manufacturer, *importing distributor* or distributor to deliver any malt [liquors] *or brewed beverages* excepting in vehicles bearing the name and address *and license number* of such distributor, *importing distributor* or manufacturer *painted or affixed* on each side of such vehicle in letters no smaller than four inches in height.

Section 28. Interlocking Business Prohibited.—(a) No manufacturer, and no officer or director of any manufacturer, shall, at the same time, be a distributor, *importing distributor or* [or retailer] *retail dispenser,* or an officer, director or stockholder or creditor of any distributor, *importing distributor or* [or of any retailer] *retail dispenser,* [fol. 150] nor, *except as hereinafter provided,* be the owner, proprietor or lessor of any place covered [by], *directly or indirectly, by* any [malt liquor distributor or malt liquor retail] *distributor's, importing distributor's malt or brewed beverage or liquor* [retail] license.

(b) No distributor *or importing distributor,* and no officer or director of any distributor *or importing distributor,* shall, at the same time, be a manufacturer or retailer, or be an officer, director, stockholder or creditor of a manufacturer or retailer, or be the owner, proprietor or lessor of any place covered by any *other* [malt liquor] *malt or brewed beverage or liquor* [retail] license.

(c) No [manufacturer or distributor or retailer,] *licensee* licensed under this act, shall *directly or indirectly*

own any stock of, or have any financial interest in, any other class of business licensed under this act.

(d) Excepting as hereinafter provided, no manufacturer, *importing distributor* or distributor shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property, or in any mortgage [lien] against the same for which a [malt liquor retail] *liquor or retail dispensers* license is granted; nor shall a manufacturer, *importing distributor* or distributor, either directly or indirectly, lend any moneys, credit, or equivalent thereof to any retailer in equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment or business [where malt liquors are licensed for sale and consumption upon the premises, excepting only the usual and customary commercial credits for malt liquors sold and delivered] *operated under a liquor or retail dispenser's li-*
[fol. 151] *cense excepting only the usual and customary credits allowed for returning packages or containers in which malt or brewed beverages were packaged for market by the manufacturer.*

(e) Excepting as hereinafter provided, no manufacturer shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property, or any mortgage lien against the same, for which a [malt liquor distributor] *distributor's or importing distributor's* license is granted; nor shall a manufacturer, either directly or indirectly, lend any moneys, credit, or their equivalent to any distributor *or importing distributor* in equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment or business where malt [liquors] *or brewed beverages* are licensed for sale by a distributor *or importing distributor*, excepting only the usual [and customary commercial credits for malt liquors sold and delivered] *credits allowed for the return of packages or containers in which malt or brewed beverages were originally packaged for the market by the manufacturer.*

(f) No distributor, importing distributor or retail dispenser shall, in anywise, receive, either directly or indirectly, any credit, loan, moneys, or the equivalent thereof from any other licensee, or from any officer, director or firm member of any other licensee, or from or through a subsidiary or affiliate of another licensee or from any firm,

association or corporation, except banking institution, in which another licensee or any officer, director or firm member of another licensee has a substantial interest or exercises a control of its business policy for equipping, fitting out, payment of license fee, maintaining and conducting, [fol. 152] *either in whole or in part, an establishment or business operated under a distributors, importing distributor's or retail dispensers license excepting only the usual and customary credits allowed for the return of packages or containers in which malt or brewed beverages were packed for the market by the manufacturer.*

The purpose of this section is to require a separation of the financial and business interests between the various classes of business regulated by this act, and no person or corporation shall by any device whatsoever, directly or indirectly, evade the provisions of this section. But in view of existing economic conditions, nothing contained in this section shall be construed to prohibit the ownership of property or conflicting interest [until January first, one thousand nine hundred and thirty-six, by a manufacturer of any place occupied by a distributor or retailer, if the manufacturer has continuously owned or had a conflicting interest in such place for a period of at least three years prior to the effective date of this act] *by a manufacturer of any place occupied by a distributor, importing distributor or retail dispenser after the manufacturer has continuously owned and had a conflicting interest in such place for a period of at least five years prior to the effective date of this act.*

The term "manufacturer," as used in this section, shall include manufacturers as defined in this act, and any person manufacturing any malt [liquor] *or brewed beverages* outside of this Commonwealth.

Section 29. Penalty.—(*a*) Any person, copartnership, association or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon con- [fol. 153] viction thereof, shall be sentenced to pay a fine not exceeding three hundred dollars ($300) for the first offense, and for any second or subsequent offense shall be sentenced, upon conviction, to pay a fine not exceeding five hundred dollars ($500). Any such person, or the members, agents, servants or employes of any such partnership or as-

sociation, or the officers, directors, agents, servants or employes of any such corporation, responsible for any violation of any of the provisions of this act, in addition to the fines hereinbefore prescribed [shall] *may*, upon a first conviction, be sentenced to imprisonment for a term not exceeding six months, and upon a second or subsequent conviction *shall* be sentenced to imprisonment for a term *of* not [less than six months or] more than one year.

(b) Upon proof being made that any licensee under this act has violated any of the provisions of this act, the board or the court of quarter sessions of the proper county, as the case may be, may, in its discretion, revoke or suspend any license issued under this act to any such licensee. The right to suspend or revoke licenses as herein set forth shall be an additional penalty to those set forth in paragraph "A" of this section.

Section 30. [Constitutionality.—The provisions of this act shall be severable, and if any of the provisions shall be held to be unconstitutional, such decision shall not affect the validity of any of the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.]

Nuisance.—(a) Any room, house, building, boat, vehicle, structure or place where malt or brewed beverages are [fol. 154] *manufactured, sold, transported, offered for sale, bartered or furnished in violation of this act, and all such beverages and property kept or used in maintaining the same are hereby declared to be common nuisances, and any person who maintains such a common nuisance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the penalties provided in this act.*

(b) An action to enjoin any nuisance defined in this act may be brought in the name of the Commonwealth of Pennsylvania by the Attorney General of the State or by the district attorney of the proper county. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases within the county in which the offense occurs. If it is made to appear, by affidavit or otherwise, to the satisfaction of the court that such nuisance exists, a temporary writ of injunction shall forthwith issue re-

straining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the proceedings. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or, in any way, interfering with the beverages or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used, as aforesaid, at the time of the hearing but, on finding that the material allegations of the petition are true, the court shall order that no beverage shall be manufactured, sold, offered for sale, transported, bartered or furnished in such room, house, building, structure, boat, vehicle or place or any part [fol. 155] *thereof. Upon the decree of the court ordering such nuisance to be abated, the court may, upon proper cause shown, order that the room, house, building, structure, boat, vehicle or place shall not be occupied or used for one year thereafter, but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than five hundred dollars ($500.00) payable to the Commonwealth of Pennsylvania for use of the county in which said proceedings are instituted and conditioned that malt or brewed beverages will not thereafter be manufactured, sold, transported, offered for sale, bartered or furnished therein or thereon in violation of this act and, that he will pay all fines, costs and damages that may be assessed for any violation of this act upon said property.*

Section 31. Local Option.—In any municipality or township an election may be held, but not oftener than once in four years, on the date of any municipal election, to determine the will of the electors with respect to the granting of licenses to [retailers of malt liquors] *retail dispensers* under the provisions of this act. Whenever electors equal to at least ten per centum of the highest vote cast for any office in the municipality or township at the last preceding general election shall petition the corporate authorities of the municipality or township for a referendum on the question of granting such licenses, the said corporate authori-

ties shall cause a question to be submitted at the municipal election occurring at least sixty days thereafter, by certifying a resolution, duly adopted, to the county commissioners for submission of such question, on the ballot or on voting [fol. 156] machines, at such election in the manner provided by the election laws of the Commonwealth.

Such question shall be in the following form:

Do you favor the granting of malt [liquor] *and brewed beverage* retail licenses *for consumption on premises where sold in the of ?*	Yes No

If a majority of the persons voting on such question vote "yes," then malt [liquor] *and brewed beverage* retail licenses shall be granted by the treasurer in such municipality or township under the provisions of this act, but if a majority of the persons voting on such question vote "no," then the treasurer shall thereafter have no power to grant or to renew, upon their expiration, any [malt liquor retail] *retail dispenser's* licenses in such municipality or township under the provision of this act.

No [retail malt liquor] *such* licenses shall be granted under the provisions of this act, as amended, in any municipality or township wherein the electors, under the provisions of the Beverage License Law of May third, one thousand nine hundred and thirty-three (Pamphlet Laws, two hundred fifty-two), *and its amendments,* voted, prior to the adoption of this amendment, against the granting of retail beverage licenses, unless, in accordance with the provisions of this act as amended, the action of the electors is hereafter reversed.

Section 32A. Constitutionality.—The provisions of this act shall be severable, and if any of the provisions shall be [fol. 157] *held to be unconstitutional, such decisions shall not affect the validity of any of the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.*

Section 32B. (a) All licenses or permits issued to manufacturers and railroad, pullman and steamship companies,

prior to the effective date of this act and which remain unrevoked on that date, shall continue in force and effect until the first day of January one thousand nine hundred and thirty-six.

(b) All licenses issued to distributors for the license year beginning June first, one thousand nine hundred and thirty-five, prior to the effective date of this act and which remain unrevoked on that date, shall be in force, subject to adjustment, as hereinafter provided, for such period of a whole license year as the amount of license fee paid to the county treasurer bears to the amount of the license fee payable for a distributor's license under this act, but no such license shall be deemed to expire prior to July first, one thousand nine hundred and thirty-five, notwithstanding the amount of the license fee paid. The board shall have power without hearing to issue, to the holders of such distributor's licenses, new licenses under the provisions of this act to expire on the date fixed by the board as the expiration date of licenses in the district in which granted, for which license a fee shall be paid equal to one-twelfth of the fee fixed by this act for each month such license is to be in force. In fixing the expiration dates of existing licenses granted to distributors by county treasurers and the dates when licenses issued by the board shall become effective, the board shall not [fol. 158] *divide any calendar month, but shall have full discretion to adjust the time for which credit shall be given for the license fee paid to county treasurers, except as above excepted.*

(c) Upon final enactment of this act, the board is authorized to issue importing distributors' licenses to those who qualify, without hearings, for such period of time as the board determines will expire between such date and the beginning of the license year for the district in which the licensed place is located, upon payment of a license fee at the schedule of rates herein set forth, said fee to be determined on a monthly basis.

Section 2. This act shall become effective immediately upon final enactment.

Section 3. The act, approved the nineteenth day of February, one thousand nine hundred and twenty-six (Pamphlet Laws, sixteen), entitled "A Supplement to the act, approved the twenty-seventh day of March, one thousand nine

hundred and twenty-three (Pamphlet Laws, thirty-four), entitled "An act concerning alcoholic liquors; prohibiting the manufacture, advertising, furnishing, traffic in, and possession of intoxicating liquors for beverage purposes, and articles and substances designed or intended for use in the manufacture thereof; defining intoxicating liquor; providing for penalties, forfeitures, and the abatement of nuisances; and repealing existing alcoholic liquor laws and alcoholic liquor license laws; providing for the registering of federal permits; also regulating, under permit, through a Pennsylvania Alcoholic Permit Board created in the Department of Welfare, the manufacture, production, distillation, development, use in manufacture, denaturization, re-[fol. 159] distillation, recovery, reuse, holding in bond, holding in storage by bailees for hire, sale at wholesale, and transportation for hire, of any alcohol or alcoholic liquid, by certain persons; also providing for fees and the disposition thereof; also authorizing the in[illegible] of the records of permittees and purchasers of said alcohol or alcoholic liquid; also declaring certain places nuisances and providing for their abatement; also providing penalties; and also repealing all acts or parts of acts inconsistent with this act," and the amendments thereto, are hereby repealed, in so far as the same relate to the manufacture and sale of malt and brewed beverages and malt liquors, and in so far as the same are inconsistent with the provisions of this act relating to the transportation of malt or brewed beverages.

Approved—The 18th day of July, A. D. 1935.

I approved this bill fully realizing that certain of its provisions are claimed to be unjust to the grocery and delicatessen interests in that they will be precluded from selling malt or brewed beverages in amounts or quantities of less than one case. If experience proves that this is an inequity, I will recommend to the next Legislature that this condition be remedied.

The enforcement provisions of the bill alone are so desirable as to warrant its approval. Under the provisions of the bill the enforcement of the malt and brewed beverage law is centralized in the Pennsylvania Liquor Control Board instead of being scattered over the sixty-seven counties as it is at present. This centralization will promote

uniformity of enforcement, will enable the Commonwealth to present a united front against the bootleg industry, and [fol. 160] will enable the Commonwealth to collect the full amount of State tax on all malt and brewed beverages sold within the Commonwealth. It will protect the legitimate licensee who is complying with the law. It will also tend to eliminate the racketeer or chiseler who has taken advantage of the present lack of enforcement, and who, by various illegal activities, has not only deprived the Commonwealth of the revenue to which it is entitled, but has also been able to sell his product at an advantage over the legitimate dealer.

All in all, the balance under this bill is so greatly in favor of the Commonwealth at large and the taxpayers, that it should be approved. Hence, I sign it.

George H. Earle.

The foregoing is a true and correct copy of Act of the General Assembly No. 398.

David L. Lawrence, Secretary of the Commonwealth.

[fol. 161] Exhibit B

EXHIBIT "B" TO ANSWER

AN ACT

To amend the act approved the twentieth day of December one thousand nine hundred thirty-three one thousand nine hundred thirty-four (Pamphlet Laws eighty-nine) entitled "An act appropriating the moneys in The State Stores Fund" by making the moneys in The State Stores Fund available *to the Department of Public Instruction for the conduct of civil service examinations, for the paymnt of refunds, and* for the reimbursement of the General Fund for certain services rendered or supplied by certain departments, *providing for the transfer of certain profits of The State Stores Fund to the General Fund and repealing inconsistent legislation.*

Section 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the*

authority of the same That section one of the act approved the twentieth day of December one thousand nine hundred thirty-three one thousand nine hundred thirty-four (Pamphlet Laws eighty-nine) entitled "An act appropriating the moneys in The State Stores Fund" is hereby amended to read as follows:

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same; That as much of the moneys, from time to time, in The State Stores Fund as may be necessary are hereby appropriated to the Pennsylvania Liquor Control Board for the proper conduct of its work in establishing, maintaining, and operating Pennsylvania Liquor [fol. 162] Stores, warehousing and testing liquor, issuing liquor licenses to hotels, restaurants, clubs, and public service companies, and otherwise administering and enforcing the Pennsylvania Liquor Control Act as follows:

(a) For the payment of the salaries, wages or other compensation, and traveling and other necessary expenses of the members of the board, and such superintendents, managers, assistant superintendents, assistant chiefs, assistant engineers, draftsmen, accountants, secretaries, auditors, inspectors, examiners, statisticians, clerks, stenographers, bookkeepers, messengers, laborers, and other assistants and employes, as may be required in the performance of the duties above mentioned, and such special deputy attorneys general, assistant deputy attorneys general, and attorneys, as may be assigned by the Attorney-General to the board or for handling any legal business pertaining to its work.

(b) For the purchase, maintenance, and repair of furniture, furnishings, stationery, supplies, materials, equipment, fuel, and printing and binding, and for the payment of the premiums on policies of insurance covering motor vehicles operated by employes of the board, and surety bonds for officers and employes of the board required to furnish such bonds, but all such purchases and all such contracts of insurance and surety bonds shall be placed through the Department of Property and Supplies as purchasing agent.

(c) For the purchase of automobiles and other automotive equipment through the Department of Property and Supplies, the maintenance and operation of automobiles, and for the payment of mileage charges to the De-
[fol. 163] partment of Property and Supplies for the use of automobiles.

(d) For the purchase of liquors to be sold in or through Pennsylvania Liquor Stores.

(e) For the payment of postage, telegrams, telephone rentals and toll charges, and rentals for or royalties upon leased office equipment, or other devices or machines.

(f) For the payment of rentals for buildings or other accommodations leased by the board, through the Department of Property and Supplies, for use by, or in connection with, Pennsylvania Liquor Stores, or for the storage or testing of liquors purchased by the board.

(g) For the payment of premiums upon policies insuring the Commonwealth against workmen's compensation liability to employes, or dependents of employes, of the board.

(h) For all other expenses of every kind and description necessary for the performance by the board of the aforesaid work.

(i) For the payment to the Department of Auditor General, of the costs incurred by that department, in auditing requisitions drawn on The State Stores Fund, and in auditing annually, periodically or specially, the affairs of the Pennsylvania Liquor Control Board, at such amounts as the Department of the Auditor General with the approval of the Executive Board, shall determine for the payment to the Treasury Department, of the cost of making disbursements out of The State Stores Fund on behalf of the Pennsylvania Liquor Control Board, in the per-
[fol. 164] formance of the duties of the board, at such amounts as the Treasury Department with the approval of the Executive Board, shall determine for the payment to the Department of Property and Supplies for space occupied in the Capitol buildings, and for water, light, heat, power, telephone, and other services utilized and consumed by the Pennsylvania Liquor Control Board for the

performance of its duties at such amounts as the Department of Property and Supplies with the approval of the Executive Board shall determine.

[(i)] (j) *For the payment of claims for refunds made to and approved by the board for moneys paid into The State Stores Fund, to which the Commonwealth is not rightfully entitled.*

Section 2. That the said act is hereby amended by adding after section one of the act the following new sections.

Section 2. As much of the money from time to time in The State Stores Fund as may be necessary, is hereby appropriated to the Department of Public Instruction, for the payment of salaries, wages, or other compensation of officers, examiners, and other employes; for the payment of postage, traveling expenses, mileage, charges to the Department of Property and Supplies for the use of automobiles, telephone, toll charges, telegrams, expenses of operating and maintaining automobiles, and other motor equipment, newspaper advertising, printing, freight, express, cartage, and incidental expenses necessary for the proper conduct of the work of the department in conducting civil service examinations for the selection of the officers and employes to be employed by the Pennsylvania Liquor Control Board to operate or assist in the operation [fol. 165] *of Pennsylvania liquor stores or other establishments maintained by the board for storing and testing liquors.*

Section 3. Any moneys in The State Stores Fund, from time to time, which may not be required for any of the purposes hereinbefore specified in this act, shall be paid over into the General Fund and shall be available for the payment of appropriations made from the General Fund. The Pennsylvania Liquor Control Board, with the approval of the Governor, shall from time to time, fix the amount of money which may be so paid over into the General Fund, and by its requisition shall direct the Department of the Auditor General and the Treasury Department to transfer such moneys from The State Stores Fund into the General Fund.

Section 4. Estimates of the amounts to be expended from The State Stores Fund under this act, from time to time by the Pennsylvania Liquor Control Board and the Department of Public Instruction respectively, shall be submitted to the Governor for his approval or disapproval, as in the case of other appropriations made to administrative departments, boards, and commissions, and it shall be unlawful for the Auditor General to honor any requisition for the expenditure of any moneys whatsoever out of The State Stores Fund, by the Pennsylvania Liquor Control Board or by the Department of Public Instruction for any purpose whatsoever in excess of the estimates approved by the Governor.

Subject to the foregoing provision, the moneys in The State Stores Fund shall be paid out of the fund upon warrant of the Auditor General drawn after requisition by the Pennsylvania Liquor Control Board of the Department [fol. 166] *of Public Instruction as the case may be.*

Section 5. All acts or parts of acts inconsistent herewith are hereby repealed.

Section 3. That section two of the said act is hereby amended to read as follows:

Section [2] *6. This act as amended shall become effective immediately upon its* [approval by the Governor] *final enactment, and shall be retroactive to the first day of June one thousand nine hundred thirty-five.*

Approved—The 18th Day of July A. D. 1935.

George H. Earle.

I do hereby certify that the foregoing is a true and correct copy of Act No. 412½.

J. Warren Mickle, Deputy Secretary of the Commonwealth.

[fol. 167] IN UNITED STATES DISTRICT COURT

[Title omitted]

SEPARATE ANSWER OF WILLB. HADLEY, COUNTY TREASURER OF PHILADELPHIA COUNTY, PENNSYLVANIA, TO THE BILL OF COMPLAINT FOR INTERLOCUTORY INJUNCTION AND PETITION FOR DECLARATORY JUDGMENT—Filed Sept. 4, 1935

To the Honorable the Judges of said Court:

WillB. Hadley, one of the defendants above named, speaking for himself and not for the other defendants, saving and reserving to himself all and all manner of the manifold errors and omissions in the said Bill of Complaint contained, for his separate answer thereto, or to so much thereof as he is advised by counsel that it is necessary and proper for him to answer, says:

1. I admit the truth of the facts averred in the 1st para-[fol. 168] graph of the Bill of Complaint.

2. I have not sufficient information upon which to found a belief as to the averments of facts set forth in the second paragraph of the Bill of Complaint and pray that if material the same may be duly proved; so far as averments of law contained in said paragraph are concerned, I am advised by counsel and therefore aver that no answer thereto is necessary.

3. I admit the truth of the facts averred in the 3rd paragraph of the Bill of Complaint.

4. I admit the truth of the facts averred in the 4th paragraph of the Bill of Complaint.

5. I admit the truth of the facts averred in the 5th paragraph of the Bill of Complaint.

6. I admit the truth of the facts averred in the 6th paragraph of the Bill of Complaint.

7. I have no knowledge sufficient to found a belief as to the averments of fact contained in the 7th paragraph of the Bill of Complaint and pray that if material the same be duly proved.

8. I have no knowledge sufficient to found a belief as to the averments of fact contained in the 8th paragraph of the

Bill of Complaint, and pray that if material the same be duly proved.

9. I am advised by counsel and therefore aver that the averments of the 9th paragraph of the Bill of Complaint, are argumentive and set forth conclusions of law which it is not necessary or proper for me to answer.

10. I am advised by counsel and therefore aver that the averments of the 10th paragraph of the Bill of Complaint, are argumentive and set forth conclusions of law which it is not necessary or proper for me to answer.

[fols. 169 & 170] 11. I am advised by counsel and therefore aver that the averments of the 11th paragraph of the Bill of Complaint are argumentative and set forth conclusions of law which it is not necessary or proper for me to answer.

12. I pray that I may under the rules of the court in such cases made and provided, be permitted to avail myself of all matters and things whereof I might have availed myself by demurrer or plea in bar with the same force and effect as if I had filed a separate demurrer or demurrers, plea or pleas in bar.

Wherefore I pray that I may be hence dismissed with my reasonable costs in this behalf most wrongfully sustained.

WillB. Hadley.

Duly sworn to by WillB. Hadley. Jurat omitted in printing.

[fol. 171] IN UNITED STATES DISTRICT COURT

[Title omitted]

SEPARATE ANSWER OF CHARLES F. KELLEY, DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, PENNSYLVANIA, TO THE BILL OF COMPLAINT FOR INTERLOCUTORY INJUNCTION AND PETITION FOR DECLARATORY JUDGMENT—Filed Sept. 11, 1935.

To the Honorable the Judges of said Court:

Charles F. Kelley, one of the defendants above named, speaking for himself and not for the other defendants, sav-

ing and reserving to himself all and all manner of the manifold errors and omissions in the said Bill of Complaint contained, for his separate answer thereto, or to so much thereof as he is advised by counsel that it is necessary and proper for him to answer, says:

1. I admit the truth of the facts averred in the 1st paragraph of the Bill of Complaint.

[fol. 172] 2. I have not sufficient information upon which to found a belief as to the averments of facts set forth in the second paragraph of the Bill of Complaint and pray that if material the same may be duly proved; so far as averments of law contained in said paragraph are concerned, I am advised by counsel and therefore aver that no answer thereto is necessary.

3. I admit the truth of the facts averred in the 3rd paragraph of the Bill of Complaint.

4. I admit the truth of the facts averred in the 4th paragraph of the Bill of Complaint.

5. I admit the truth of the facts averred in the 5th paragraph of the Bill of Complaint.

6. I have not sufficient information upon which to found a belief as to the averments of facts set forth in the sixth paragraph of the Bill of Complaint and pray that if material the same may be duly proved; so far as averments of law contained in said paragraph are concerned, I am advised by counsel and therefore aver that no answer thereto is necessary.

7. I have no knowledge sufficient to found a belief as to the averments of fact contained in the 7th paragraph of the Bill of Complaint and pray that if material the same be duly proved.

8. I have no knowledge sufficient to found a belief as to the averments of fact contained in the 8th paragraph of the Bill of Complaint, and pray that if material the same be duly proved.

9. I am advised by counsel and therefore aver that the averments of the 9th paragraph of the Bill of Complaint, are argumentive and set forth conclusions of law which it is not necessary or proper for me to answer.

10. I am advised by counsel and therefore aver that the averments of the 10th paragraph of the Bill of Complaint, are argumentive and set forth conclusions of law which it [fols. 173 & 174] is not necessary or proper for me to answer.

11. I am advised by counsel and therefore aver that the averments of the 11th paragraph of the Bill of Complaint are argumentive and set forth conclusions of law which it is not necessary or proper for me to answer.

12. I pray that I may under the rules of the court in such cases made and provided, be permitted to avail myself of all matters and things whereof I might have availed myself by demurrer or plea in bar with the same force and effect as if I had filed a separate demurrer or demurrers, plea or pleas in bar.

Wherefore I pray that I may be hence dismissed with my reasonable costs in this behalf most wrongfully sustained.

Charles F. Kelley.

Duly sworn to by Charles F. Kelley. Jurat omitted in printing.

[fol. 175] In United States District Court

[Title omitted]

Stipulation as to Hearing—Filed Oct. 22, 1935

And now, to wit, this 21st day of October, 1935, it is stipulated and agreed by and between C. S. Wesley, Esq., attorney for Complainant, and Grover C. Ladner, Esq., Attorney for defendants, that the hearing in the above-entitled proceeding shall be considered as a hearing on application for a permanent injunction.

(Sgd.) C. S. Wesley, Attorney for Complainant.
Grover C. Ladner, Deputy Atty. Gen'l, Attorney for Defendants.

[fol. 176] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION FOR AFFIRMANCE OF FINDINGS OF FACT—Filed Oct. 22, 1935

It is stipulated and agreed, by and between Wesley, Wagoner, Troutman & McWilliams, Esquires, Attorneys for complainants, Grover C. Ladner, Esquire, Deputy Attorney General, and Horace A. Segelbaum, Esquire, Special Deputy Attorney General, Attorneys for Walter T. Grosscup, W. Worrell Wagner, and Leo A. Crossen, constituting the Pennsylvania Liquor Control Board, Charles J. Margiotti, Attorney General of the Commonwealth of Pennsylvania, and George H. Earle, 3d, Governor of the Commonwealth of Pennsylvania; and J. Louis Breitinger, Esquire, Attorney for WillB. Hadley, County Treasurer of Philadelphia [fol. 177], County, Pennsylvania; that the following findings of fact may be affirmed:

1. The complainant is a corporation organized and existing under the laws of the State of Delaware and as such, is duly registered under the laws of the Commonwealth of Pennsylvania, where it maintains an office and place of business at 1601 Chestnut Street, Philadelphia, Pennsylvania. Complainant is there engaged wholly in the business of selling, at wholesale, malt and brewed beverages imported into Pennsylvania from the States of Wisconsin and Illinois.

2. The defendants, Walter T. Grosscup, W. Worrell Wagner and Leo A. Crossen, comprise the Liquor Control Board of the Commonwealth of Pennsylvania, are duly appointed and qualified as such, and are citizens of the Commonwealth of Pennsylvania, and reside in the County of Philadelphia. The defendant, Charles F. Kelley, is District Attorney of the County of Philadelphia, State of Pennsylvania, and is a citizen of the Commonwealth of Pennsylvania, residing in the City of Philadelphia. The defendant WillB. Hadley, is County Treasurer of the County of Philadelphia, State of Pennsylvania, and is a citizen of the Commonwealth of Pennsylvania, residing in the City of Philadelphia. The defendant, Charles J. Margiotti, is Attorney

General of the Commonwealth of Pennsylvania, and is a citizen of the Commonwealth of Pennsylvania, residing in the County of Jefferson. The defendant, George H. Earle, 3d, is the Governor of the Commonwealth of Pennsylvania, and is a citizen of the Commonwealth of Pennsylvania, residing in the County of Montgomery. The foregoing public officers, under the provisions of the Beverage License [fol. 178] Law of 1935, are charged with the duty of the enforcement, operation, and execution of the provisions thereof, and charged with the duty of enforcing the civil and criminal penalties as provided in said law.

3. The amount here in controversy, exclusive of interest and costs, exceeds the sum of $3,000.00.

4. The Premier-Pabst Corporation is a corporation organized under the laws of the State of Delaware and is engaged in the manufacture of a malt and brewed beverage, namely: beer, at Milwaukee, Wisconsin, and Peoria, Illinois, and is the owner of all of complainant's capital stock.

5. The officers and directors of complainant are not residents of the State of Pennsylvania, but all are citizens of the United States.

6. The complainant, for several years last past, has imported and sold at wholesale "Pabst" Beer, manufactured outside the Commonwealth of Pennsylvania, to purchasers thereof residing, inter alia, in the State of Pennsylvania. In fulfillment of the contracts of sale entered into by it, complainant purchases beer from the brewer, the Premier-Pabst Corporation, and the beer thus purchased is shipped from the breweries of the Premier-Pabst Corporation either at Milwaukee, Wisconsin, or at Peoria, Illinois, f. o. b. railroad cars in interstate traffic, and delivered to the purchasers thereof at their respective places of business in the state aforesaid. The complainant's profit as an importer or distributor of said malt and brewed beverage is measured by and consists of the difference between the price charged it by the brewer of said beverage and the price paid by the several purchasers thereof, which profit is greatly in excess of the sum of $3,000.00 per year.

[fol. 179] 7. Complainant owns and possesses personal property in the State of Pennsylvania amounting to upwards of $7,000.00, and has expended, since April 7th, 1933, in advertising, sales promotion, and other incidental expenses for the establishment of its trade, custom, and good will, in the State of Pennsylvania, approximately $400,000.00, and there engages in its service thirty-one employees whose salaries aggregate annually $80,000.00.

8. The complainant has built up and established a profitable trade in the sale of "Pabst" beer at wholesale by and through one of its principal offices situate at 1601 Chestnut Street, Philadelphia, and during the calendar year 1934 sold in excess of 50,000 barrels of beer to its customers in the Commonwealth of Pennsylvania, approximating in value $500,000.00.

9. The complainant is the holder for the year 1935 of a malt liquor distributor's license, being license No. 925, issued by the City Treasurer of Philadelphia under the Malt Liquor License Law of 1934, amending the Beverage License Law of 1933, which license authorized complainant to engage in the business, inter alia, of importing malt and brewed beverages manufactured outside the State of Pennsylvania and distributing such beverages within the State.

10. Under the provisions of the Pennsylvania Beverage License Law of 1935, and regulation No. 51 issued by defendants constituting the Pennsylvania Liquor Control Board on July 25th, 1935, no person or corporation (domestic or foreign) may engage in the business of importing malt and brewed beverages from without the Commonwealth of Pennsylvania for sale and distribution therein without first obtaining an "Importing Distributor's" license.

[fol. 180] 11. There exists, in the Commonwealth of Pennsylvania, a demand by consumers for the beer manufactured outside the Commonwealth of Pennsylvania by Premier-Pabst Corporation and other nationally known breweries; and the complainant, by reason of large expenditures of money in advertising and other sales promotions, has developed and enjoys a large and valuable trade and custom in the sale of the Pabst beer manufactured out-

side the Commonwealth of Pennsylvania and sold by complainant therein.

Wesley, Wagoner, Troutman & McWilliams, (Sgd.) by C. S. Wesley, Attorneys for Complainant. (Sgd.) Grover C. Ladner, Deputy Attorney General; (Sgd.) Horace A. Segelbaum, Special Deputy Attorney General, Attorneys for Pennsylvania Liquor Control Board, Charles J. Margiotti, Attorney General, and George H. Earle, 3d, Governor of the Commonwealth of Pennsylvania. (Sgd.) J. Lewis Breitinger, Attorney for WillB. Hadley, County Treasurer of Philadelphia.

[fol. 181] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINANT'S REQUESTS FOR CONCLUSIONS OF LAW—Filed Oct. 22, 1935

Complainant requests the Court to conclude, as matters of law, that:

1. The bill of complaint in this cause was filed by complainant on behalf of itself and all other corporations and persons similarly situated, to enjoin and restrain the enforcement by the defendants of certain provisions of the Pennsylvania Beverage License Law of 1935. The cause of action arises under the Constitution of the United States, and the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00. The complainant further seeks a declaratory judgment from this court, adjudging and decreeing that certain sections of the said law are [fol. 182] invalid and in violation of the rights of complainant under the Constitution of the United States.

2. The Pennsylvania Beverage License Law of 1935 (Act No. 398) became effective July 18th, 1935. It provides, inter alia, for the licensing of "manufacturers", "retailers", "distributors", and "importing distributors" of malt and brewed beverages.

Under Section 2 (a) of said Act, a malt or brewed beverage is defined as follows:

"(a) The term 'malt or brewed beverage' means any beer, lager beer, ale, porter, or similar fermented malt liquor, containing one-half of one per centum or more of alcohol by volume, by whatever name such liquors may be called."

Under Section 2 (c) of said Act, a manufacturer is defined as follows:

"(c) The word 'manufacturer' means and includes all persons holding licenses issued by the board to engage in the manufacture, bottling, transportation, and sale of malt or brewed beverages."

Under Section 2 (f) of said Act, a retailer is defined as follows:

"(f) The term 'retailer' means and includes persons licensed by the treasurer to engage in the retail sale of malt or brewed beverages, classified and defined as follows:

"'Retail Dispenser' means and includes persons licensed to engage in the retail sale of malt or brewed beverages for consumption on the premises of such licensee, with the privilege of selling malt or brewed beverages in quantities not in excess of seventy-two fluid ounces in a single sale to one person, to be carried from the premises by the purchaser thereof."

Under Section 2 (d), a distributor is defined as follows:

"(d) The term 'distributor' means and includes persons licensed by the board to engage in the purchase only from Pennsylvania manufacturers and from importing distrib- [fol. 183] utors and the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturer but not for consumption on the premises where sold and in quantities of not less than two hundred eighty-eight fluid ounces."

Under Section 2 (e) of said Act, an importing distributor is defined as follows:

"(e) The term 'importing distributors' means and includes persons licensed by the board to engage in the purchase from manufacturers and other persons located outside this Commonwealth and from persons licensed as man-

ufacturers and distributors under this act and the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturer but not for consumption on the premises where sold, and in quantities of not less than two hundred eighty-eight fluid ounces."

3. Under the provisions of the laws of the Commonwealth of Pennsylvania prior to the Pennsylvania Beverage License Law of 1935, a person or corporation engaged in the business of a wholesale distributor of beer manufactured outside the Commonwealth of Pennsylvania paid the same license fee as a distributor of such beverage brewed within the Commonwealth of Pennsylvania.

4. Under Section 19 of the Pennsylvania Beverage License Law of 1935, "importing distributors" are required to pay to the County Treasurer a license fee of $900.00, while "distributors" under said section are required to pay to the County Treasurer a license fee of $400.00. Under Section 18 of said law, "importing distributors" are required to file a bond in the penal sum of $2,000.00, while "distributors" under said section are required to file a bond of $1,000.00.

5. Under Section 5 (b) of the Pennsylvania Beverage License Law of 1935, the holder of an "importing distributor's" license possesses no greater or additional rights than those possessed by the holder of a "distributor's" license except the right to purchase and import malt beverages manufactured outside the state.

6. Under the said law, particularly Sections 3, 4, 5, 21, [fol. 184] and 23 (z) thereof, it is unlawful, and subject to the penalties therein provided, for any person or corporation, except the holder of a license issued thereunder, to sell, deal in, or import into the Commonwealth of Pennsylvania any malt or brewed beverages.

7. Under Regulation 51, adopted by the defendants constituting the Pennsylvania Liquor Control Board, which regulations were issued in accordance with Section 23 (z) of the said law, it is unlawful for any person or corporation to engage in the business of importing beer from without the Commonwealth of Pennsylvania for sale and distribution within the Commonwealth of Pennsylvania without first obtaining an "importing distributor's" license.

8. Under Section 5 (b) of the said Law, a license cannot be issued to a corporation desiring to conduct the business of a distributor or importing distributor unless all of its officers and directors and the holders of 51% of its capital stock have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of the application.

9. Under Section 29 of said Law, each individual sale by an unlicensed importer of beer manufactured outside the state consitutes a separate offense, and under this section of the Act any person or corporation violating any of the provisions thereof is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding $300.00 for the first offense, and for any second or subsequent offense shall be sentenced, upon conviction, to pay a fine not exceeding $500.00. In addition to the fines therein prescribed, any person or the officers, directors, servants, agents, or employees of any corporation responsible for any such violation may, upon a first conviction, be sentenced to imprisonment for a term not exceed-
[fol. 185] ing six months, and upon the second or subsequent conviction shall be sentenced to imprisonment for a term of not more than one year.

10. Under the laws of the Commonwealth of Pennsylvania, beer is a lawful commodity, and the manufacture, importation and sale thereof, under reasonable regulations, is a lawful business.

11. Since under the laws of the Commonwealth of Pennsylvania the importation of beer into the State in interstate commerce from points outside the State is lawful, the State may only restrict and limit the importation thereof in accordance with the limitations imposed by the Constitution of the United States.

12. Beer, when imported from one state into another, upon arrival in the state of destination falls in the same legal category as like products of domestic origin; and since, under the laws of the Commonwealth of Pennsylvania, beer is a legitimate article of commerce, the State cannot subject imported beer or the dealer thereof to any burdens and impositions which are not imposed upon domestic beer or the dealer thereof.

13. The Commonwealth of Pennsylvania, in regulating, licensing, taxing or restricting interstate commerce in beer, cannot in the exercise of its police power discriminate against beer or the dealer thereof solely because of its origin outside the state.

14. Since the manufacture and sale of beer is a lawful business, and so recognized by the laws of the Commonwealth of Pennsylvania, neither the Act of Congress known as the Webb-Kenyon Act nor the Twenty-first Amendment to the Constitution of the United States permits the Commonwealth of Pennsylvania to discriminate against beer of foreign manufacture merely because of its origin outside the state. Such a discrimination constitutes an undue and unconstitutional burden upon interstate commerce.

15. The provisions of the Pennsylvania Beverage License [fol. 186] Law and the regulations issued thereunder impose an unconstitutional burden upon interstate commerce in attempting to tax complainant, a distributor of beer manufactured outside the state, at a rate higher than that imposed upon a distributor of beer of domestic origin.

16. The provisions of the Pennsylvania Beverage License Law of 1935, which exact of complainant, a distributor of beer manufactured outside the state, a license fee in excess of that required of a distributor of beer manufactured within the state, unfairly discriminate against the product of another state solely because of its origin, rest upon no rational basis, are arbitrary and capricious, and deprive complainant of its liberty and property, without due process of law, and deny to it the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States.

17. The provision of the Pennsylvania Beverage License Law of 1935 that all the officers and directors of complainant shall be residents of the Commonwealth of Pennsylvania for two years before complainant can receive a license as an importing distributor of beer, bears no substantial relationship to the State's regulation and control of the business, rests upon no rational basis, is arbitrary and unreasonable, and deprives complainant of its liberty and property, without due process of law, and denies to it the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States.

18. The provision of the Pennsylvania Beverage License Law of 1935 that the owners of a majority of complainant's stock shall be residents of the Commonwealth of Pennsyl- [fol. 187] vania for two years before complainant can receive a license as an importing distributor of beer, bears no substantial relationship to the State's regulation and control of the business, rests upon no rational basis, is arbitrary and unreasonable, and deprives complainant of its liberty and property, without due process of law, and denies to it the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States.

19. Since the complainant possesses, within the Commonwealth of Pennsylvania, tangible property and the good will, trade and custom of a going business there conducted, and since the enforcement of the unconstitutional provisions of the Pennsylvania Beverage License Law of 1935 will involve a direct invasion of these property rights, resulting in irreparable injury thereto, complainant is entitled to injunctive relief.

(See: Truax v. Raich, 239 U. S. 33; M. Schnadler Bottling Co. v. Welch, 4 Fed. 561.)

20. An actual and immediate controversy exists between the complainant and defendants who, unless restrained, will enforce the aforesaid unconstitutional provisions of the Pennsylvania Beverage License Law of 1935, the enforcement of which will inflict upon complainant irreparable damage and result in the ruination of its business and the destruction of its property and property rights. Since, by its own terms, the provisions of said Law are severable, and the validity of other provisions of said Law is not here involved, an injunction shall issue restraining the defendants from requiring of complainant, a distributor of beer imported from without the State of Pennsylvania a license fee in excess of that exacted of a distributor of beer manufactured within the State, and further restraining defend- [fol. 188] ants from enforcing those provisions of said law which deny to the complainant an importing distributor's license because all its officers and directors and the holders of 51% of its stock are not residents of the Commonwealth of Pennsylvania.

Let appropriate final decree be entered.

Wesley, Wagoner, Troutman & McWilliams, (Sgd.)
by E. S. Wesley, Attorneys for Complainant.

[fol. 189] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS' REQUESTS FOR CONCLUSIONS OF LAW—Filed Jan. 16, 1936

The defendants, Walter T. Grosscup, W. Worrell Wagner and Leo A. Crossen, constituting the Pennsylvania Liquor Control Board, Charles J. Margiotti, Attorney General of the Commonwealth of Pennsylvania, and George H. Earle, III, Governor of the Commonwealth of Pennsylvania, by their counsel, Grover C. Ladner, Deputy Attorney General, and Horace A. Segelbaum, Special Deputy Attorney General, respectfully request your Honorable Court to find the following conclusions of law:

1. The Act of Assembly of the Commonwealth of Pennsylvania, known as the "Beverage License Law of 1935" (Act of July 18, 1935, No. 398), the provisions of which the complainant claims to be unconstitutional, is an amend-
[fol. 190] ment of the Beverage License Law of 1933 (Act of May 3, 1933, P. L. 252), as amended by the Malt Liquor License Law of 1933 (Act of December 20, 1933, Special Session 1933-34, P. L. 75).

2. These acts were passed by the Commonwealth of Pennsylvania in exercise of its police power as reinforced by the Twenty-First Amendment of the Constitution of the United States, in regulation of liquor traffic.

3. The act in question, particularly Sections 3 and 4 thereof, makes it unlawful to sell or dispense malt or brewed beverages except as provided in said act.

4. Section 5(b), (particularly complained of) in exercise of the regulation of the exceptions under which malt and brewed beverages may be lawfully sold, classifies wholesale licensees into two classes, namely, distributors and importing distributors. In the erection of this classification, no discrimination is made between foreign and domestic corporations or individuals applying for either distributor licenses or importing licenses.

5. The distributor licensee, as indicated in Section 2, Subdivision (e), is described and limited to one who engages in the purchase of malt or brewed beverages from

Pennsylvania manufacturers only, or from importing distributors and to the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturers, and may not sell for consumption on the premises where sold or in quantities of less than 288 fluid ounces.

6. Subdivision (e) of Section 2 defines "Importing dis- [fol. 191] tributor" to mean and include persons licensed by the board to engage in the purchase from manufacturers and persons located outside of this Commonwealth, as well as from persons licensed as manufacturers and distributors under this act, and to resell malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturers but also not for consumption on the premises where sold and in quantities not less than 288 fluid ounces.

7. From these provisions, it appears that the importing distributor is granted superior rights over and above the distributor, in that he may buy either from domestic or foreign manufacturers or domestic or foreign distributors, and may resell not only to retail dispensers but also to other distributors; whereas, distributors are restricted in their purchase from domestic manufacturers and/or importing distributors and are denied the right to purchase from foreign manufacturers or foreign or domestic distributors, or to sell to other distributors. In view of this differentiation of privileges, the difference in the license fee being $400.00 in the case of a distributor and $900.00 in the case of an importing distributor, is not only reasonable but justified.

8. A state, under its police power, as reinforced by the Twenty-First Amendment of the Constitution of the United States, may lawfully classify licensees engaging in the traffic of intoxicating liquors, fix license fees for each class, change such classifications and fees from time to time as its Legislature, in its wisdom, deems proper, and may limit the extent to which licensees in various classes may engage in such traffic, and also prescribe the conditions under which such classes of licenses may be issued.

[fol. 192] 9. The provision requiring that corporation licensees, whether domestic or foreign, to conform to the requirement that the officers and directors and majority of stockholders be residents of the Commonwealth of Pennsyl-

vania is entirely reasonable, in view of the well known fact that the regulation of traffic in intoxicating liquors can only be adequately enforced, if at all, through the medium of criminal prosecution, and such means would be unavailing if corporations be permitted to carry on such business with non-resident officers who are beyond the reach of criminal process. This requirement simply places corporate officers upon the same level with individuals. In this, there is no discrimination since the law also requires individuals to be residents.

10. Even if the provisions regulating the issuance of the importing distributors' licenses and fees be held unconstitutional, Section 32A, which provides that "The provisions of this act shall be severable, and if any of the provisions shall be held to be unconstitutional, such decision shall not affect the validity of any of the remaining provisions of this act" and "It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein"; leaves the effect of the general prohibitory clauses (Sections 3 and 4) unimpaired. As a consequence of which and the operation of the Twenty-First Amendment, any sales by the complainant would still be unlawful. Under such circumstances, a court of equity will not issue injunctions because its action would be futile and vain.

[fol. 193] 11. The public policy of the Commonwealth of Pennsylvania with regard to dispensing of intoxicating liquors, as evidenced by Section 28, Subdivision (f) of the Beverage License Law of 1933, as amended in 1935, is against permitting the manufacturer of intoxicating liquor of any kind being interested directly or indirectly in or in any wise financing retail or wholesale licensees or dispensers, whether as creditor or as stock owner. For this purpose, Subdivision (e) of Section 28 prohibits stock ownership, inter alia, of either a distributor or an importing distributor by a manufacturer, domestic or foreign. The ownership of the complainant's entire capital stock by the foreign manufacturer is directly in conflict with this public policy and renders the complainant absolutely ineligible to be licensed either as an importing distributor or even as a distributor.

12. The complainant in this case does not come into a court of equity with clean hands, in that it is operating under a distributor's license issued by the County Treasurer of Philadelphia in violation of the law as it was before the amendment of 1935. Section 12 of which law (Act approved December 20, 1933, Special Session 1933-34, P. L. 75) authorizes the issuance of such licenses by the county treasurer only "to corporations organized in or duly authorized to transact business in this Commonwealth and all of whose officers and directors shall be citizens of the United States who have also been residents of this Commonwealth for at least three years immediately preceding, the application for license". The complainant in this case having alleged in the bill that its officers and directors were nonresidents of this Commonwealth.

12A. The privilege to sell and dispense intoxicating liquor under license is not a property right and is consequently not the subject of protection by a court of equity. [fol. 194] *Commonwealth.*

13. Courts will not interfere by injunction where the injury inflicted or threatened is merely the vexation of arrest and punishment of complainant, who is left free to litigate the question of unconstitutionality of the statute or ordinance or its construction or application in making his defense at trial or prosecution for its violation. The remedy at law by indictment and prosecution is presumed to be adequate. It is only where the statute or ordinance is unconstitutional or otherwise invalid, and where, in the attempt to enforce it, there is a direct invasion of property rights, resulting in irreparable injury, that an injunction will issue to restrain the enforcement thereof. Both of the elements are indispensable, and the latter element is not present where, as here, it appears that the injury or loss to the complainant's business or rights of property would be only such as would incidentally flow from the arrest or prosecution thereunder.

Long v. Hetzger, et al., 301 Pa. 449-154.

14. Every intentment should be made in favor of upholding the constitutionality of State laws, and Federal Courts will enjoin only such as are clearly in contravention of the Federal Constitution.

15. The Twenty-First Amendment to the Federal Constitution must be regarded as divesting intoxicating liquor

of any protection of the Interstate Commerce Clause. The right of a state to prohibit totally, as is in said Twenty-First Amendment guaranteed, necessarily involves the right to prohibit conditionally, and especially so where the conditions are neither discriminatory or unreasonable, as here.

[fol. 195] 16. The provisions of Section 2 of Article IV of the Federal Constitution, providing the citizens of each state shall be entitled to all privileges and immunities of the citizens of the several states, cannot be invoked by this complainant under the well settled rule that a corporation is not a citizen within the meaning of this provision of the Constitution.

17. Neither does the clause of the Fourteenth Amendment, forbidding a state to deny to any person within its jurisdiction the equal protection of the law, apply, because laws of the State of Pennsylvania do not deny to the complainant equal protection of its laws. The complainant is granted privileges equal with licensees of the same class, whether individual or domestic or foreign corporation. Neither can said clause be invoked by the complainant's parent company, the Premier Pabst Corporation (the manufacturing brewer), because it is not a complainant in this bill, nor is it a person within the jurisdiction of the State of Pennsylvania.

18. The right to engage in the sale of intoxicating liquors is not one of the privileges or immunities of citizens of the United States, which the states are thereby forbidden to abridge. Nor can such restrictive statutes be said to deprive persons of liberty or property without due process of law. Nor, if not entirely arbitrary in their discrimination between persons, do they deprive anyone of the equal protection of the law. Phillips v. Mobile, 208 U. S. 472.

Respectfully submitted, (Sgd.) Grover C. Ladner,
Deputy Attorney General.

[fol. 196] IN UNITED STATES DISTRICT COURT

OPINION SUR TRIAL HEARING ON BILL, ANSWER AND PROOFS—Filed Dec. 10, 1935

Before Thompson, Circuit Judge, Dickinson and Kirkpatrick, District Judges

Argued September 23rd, 1935

November 10th, 1935.

DICKINSON, D. J.:

The Webb-Kenyon Act, confirmed by the Twenty-first Amendment, forbids the importation of intoxicating liquors into any State in violation of the laws thereof. The plaintiff claims the right to do this forbidden thing and asks a Court of Equity to declare and enforce it. Does the right exist? It is argued that it does here because the Pennsylvania Act is in conflict with two provisions of the Constitution of the United States and hence unconstitutional.

1. Clause 3 of Section 8 of Article I know as the Com-
[fol. 197] merce Clause, and

2. Section 2 of Article IV and Section 1 of the Fourteenth Amendment, known as the due process, equal rights and equal protection of the law, Clauses.

The Commerce Clause

It is one of the unique features of the American scheme of Government that we are citizens of the United States and likewise citizens of the State in which we reside, and as such citizens we owe allegiance to the United States and obedience to its laws, while at the same time we also owe allegiance to our State and obedience to its laws. It might be said that such a plan would prove unworkable because a conflict would be inevitable. All danger of conflict is however avoided by a very simple expedient. The United States and each of the States have by the Constitution agreed what sovereign powers shall be exercised by the United States and which surrendered by the States, and have further agreed that the Courts shall determine the limits of the powers so committed and so surrendered. The

Commerce Clause provides us with an illustration. Each State as a sovereign State had full dominion and control over imports. It was however agreed that no State should exercise this power but that it shall be wholly committed to the United States. A practical result has been that we have as free commercial intercourse within the United States as within each State. This has proven to be an inestimable blessing. A legal consequence was that the States surrendered the exercise of all control over imports and interstate commerce and such control was committed to the [fol. 198] United States alone. We have been supplied with abundant authority for this proposition. There is no need to discuss the citations. It further follows that without a law of the United States to support it, no State could of itself do what the State of Pennsylvania has undertaken to do in the instant case. Some subjects of commerce however may be regarded by the people of a State as evils. Intoxicating liquor is by some so regarded. Any article of import when brought into a State becomes commingled with commodities within the State which are the subject of intrastate trade and subject to the regulation of sale and use. Admission into the State could not, under the Commerce Clause, be denied but the State had the power to control it after it came into the State. This raised the question of when the United States control ended and that of the State could be exercised. The Courts answered the question of applying "the original package" doctrine. The States found their laws, passed to control the traffic in intoxicating liquors, overborne by the flood of imported liquors. There was because of this a persistent knocking at the doors of Congress demanding relief. Congress long resisted the appeal, but after a time so far relented as to pass the Wilson bill. This was in terms directed at "the original package" doctrine. It provided that the line of scrimmage between the interstate commerce laws and those of the State should be drawn when and where the imported liquors reached and were delivered to the consignee and were not as theretofore to retain their status of interstate shipments as long as they remained "in the original package". As soon as the import passed this new line, the State laws became operative. The Wilson Act however was not found [fol. 199] to be effective and was followed by the Webb-Kenyon Act, the Reed Amendment and finally by the Twen-

ty-first Amendment. As the law now is, the measure of control which the States may exercise is determined by the States themselves. If the importation of intoxicating liquor is acceptable to a State, it retains its status as the legitimate subject of interstate commerce but if it is forbidden importation by the State of laws of the United States likewise forbid it. Interstate commerce is spoken of under the figure of a stream whose free flow cannot be interrupted by any State law. Any State may however remove intoxicating liquor as a subject of interstate commerce. When it does so by passing a law on the subject of its importation, the law of the United States forbids its further importation if in violation of the laws of the State. Such is now the law and that the law was once otherwise goes for naught.

The proposition urged upon us that the law of a State which conflicts with the Constitution of the United States is a nullity, is sound enough, but the plaintiff is asking to have nullified a provision of the very Constitution to which it appeals.

Under the Twenty-first Amendment when a State passes a law upon the subject of the importation of intoxicating liquors all importation in violation of that law is forbidden by the Constitution and laws of the United States. The State of Pennsylvania has passed such a law and all imports of intoxicating liquors in violation of that law are forbidden. It further follows that the Commerce Clause avails the plaintiff nothing.

[fol. 200] Due Process and Equal Protection

The argument addressed to us seems to concede that if a State prohibited absolutely all sales of alcoholic liquors no imports of it would be lawful. If, however, the State permitted sales by its own citizens, no matter how restricted, it could not deny to sellers outside the State an equal right to the like privilege. The thought is presented in the figure of a truck loaded with intoxicating liquor reaching a State line where it is confronted by a gate barrier and a State Warden who denies admission. The driver sees on the inside of the line intoxicating liquors being used and dealt in. Because of this he asserts an equal right and proposes to crash the gate. The question however is not one of his right to enter but to give entrance to the intoxicating liquor.

Such entrance is forbidden by the State law and when so forbidden is, as we have said, barred also by the Twenty-first Amendment. There is no partiality in such a law.

There is moreover an overstatement in the distinction drawn between prohibition and regulation of the liquor traffic. There is undoubtedly such a distinction. The Reed Amendment recognizes it and is built upon it. Words however always have an historical meaning. We speak of prohibition of the traffic in alcoholic liquors. In strictness there has never been such a prohibition and in the nature of things can never be. Prohibition is never absolute but qualified as in its sale and use for beverage purposes. On [fol. 201] the other hand, all regulating laws are prohibition laws. Sales may be prohibited except by a licensed few; they may be prohibited otherwise than at designated places or in a prescribed form or they may be prohibited for use as a beverage. There is prohibition in all. The difference is one of degree. There is, however, a recognized distinction. Prohibition of all sales of alcohol for use as a beverage we call prohibition. The other modified forms of prohibition we call regulation of the traffic. Importation, on the other hand, is an act. The test of its legality is by the Webb-Kenyon Act and by the Twenty-first Amendment made the law of the importing State. It might have made the test that applied by the Reed Bill—the laws of a Prohibition State. It was however made otherwise—whether the import would be in violation of any law of the State of importation. This test is a Constitutional provision. Such provisions, if conflicting, are subject to the rule applied to conflicting statutes. The latest controls. The provisions of the original Constitution, as of the earlier amendments, must give way to the later. Moreover without the Twenty-first Amendment the Pennsyvania Act would not have infringed any Constitutional provision with the Webb-Kenyon Act in force. All the Commerce Clause does is to commit the control of imports to Congress. What Congress permits is not unconstitutional. Some of the provisions of the Pennsylvania Act do undoubtedly discriminate in favor of the citizens of the State. The traffic in intoxicating liquors is universally known to be loaded with danger to the public weal. It may be subjected to the most stringent regulation. Licenses to sell to the ultimate consumer may be [fol. 202] limited to those who in the conduct of the business can be brought under control and supervision. The

traffic is one emphatically "fraught with a public interest". No one can claim "the right and privilege" to do harm to others. The regulation of the traffic by State laws, in the attempt to minimize the evils attending it, is no infringement of the rights of any one. It is no denial of any of "the privileges and immunities" of citizens of the United States.

De Grazier vs. Stephens, 101 Tex., 194, 61 A. L. R., 337, and cases cited in notes.

That the effect of some of the regulations may be to favor domestic products or citizens of the State does not in itself render a State law obnoxious to the provisions of the Fourteenth Amendment.

Cox vs. Texas, 202 U. S., 446.
Brown-Forman vs. Commonwealth, 217 U. S., 563.
Warehouse vs. Tobacco Growers, 276 U. S., 71.
American Sugar vs. Louisiana, 179 U. S., 89.

A very illuminating discussion of this feature may be found in the dissenting opinion in

Leggett vs. Lee, 288 U. S., 541.

The conclusions reached are:

1. The Pennsylvania Act is a Constitutional exercise of the power of the State to legislate on the subject of the Importation of intoxicating liquor into the State.

2. The right demanded by the plaintiff is the right to import beer into the State of Pennsylvania "in violation of the law" of the State. This right the Webb-Kenyon Act and the Twenty-first Amendment deny and the importation is [fol. 203] forbidden.

3. The Bill of the plaintiff should be dismissed, with costs, as wanting in Equity.

The California and Georgia Cases

The like questions have been brought before other Courts upon the rulings in which the plaintiff relies. A decent respect for the Courts rendering these decisions calls for a statement of our reasons for reaching a different conclusion. The cases are Young's Market Company vs. State Board, ruled by the District Court for the Southern District

of California, a copy of the opinion in which has been supplied to us, and a like ruling by the Court of the Georgia District, in which no opinion has been made public.

We are not advised of the provisions of the California Statute and restrict ourselves to such expressions of the opinion as have application to the Pennsylvania Act. We accept, of course, the proposition that without the Wilson, Reed and Webb-Kenyon Acts and the Twenty-first Amendment, any interruption of the free flow of beer into Pennsylvania in interstate commerce would be obnoxious to the Commerce Clause of the Constitution. No citation of authorities is needed to support this proposition. The opinion, however, so far as it applies to the instant case, is based upon a phrase in the Triner vs. Arundel case, 11 Fed. Supp., 145, to the effect that the Twenty-first Amendment does not withdraw intoxicating liquors as a subject of interstate commerce. The opinion hastens to add, however, that by it the States are "free to determine to what extent, if at all, intoxicating liquors" shall continue to be the lawful subject of such commerce. It may be that it is inaccurate [fol. 204] to say that the Webb-Kenyon Act or the Twenty-first Amendment withdraws intoxicating liquor from the subjects of interstate commerce. Clearly neither does of itself because such liquors continue to be the subject of such commerce until the State has acted. As soon however as the importation is forbidden by a State law, the importation is forbidden by the Constitution and laws of the United States. In this respect intoxicating liquor is made an exception to other subjects of interstate commerce.

It is here that we find ourselves in disagreement with what we are asked to find in the opinion in the cited case. It is that any State law which interferes with the importation of intoxicating liquor into the State is in conflict with the Commerce Clause of the Constitution and hence a nullity.

We adhere to the view, before expressed, that if it cannot be imported without a violation of a law of the State its importation is declared unlawful by the Webb-Kenyon Act and by the Twenty-first Amendment, and it is hence without the operation of the Commerce Clause.

The State Statutes in the cited cases were held to be in conflict with the Fourteenth Amendment. We, of course, express no opinion as to this feature of those cases, but we hold that the Pennsylvania Statute is not so in conflict.

In compliance with the Equity Rule formulated November 25th, 1935, we file herewith Findings of Fact and Conclusions of Law.

The Bill before us prays for an injunction against the enforcement of the Pennsylvania Statute and also asks for a declaratory judgment.

[fol. 205] To give definiteness of date to the decree entered none is now made but the parties have leave to submit a formal decree in conformity with this opinion.

[fol. 206] In United States District Court for the Eastern District of Pennsylvania, Sitting in Equity, June Term 1935

No. 8953

Premier-Pabst Sales Corporation

vs.

Walter T. Grosscup et al.

Injunction Bill

Answers to Requests for Findings of Fact and Conclusions of Law and Findings Under Equity Rule 70-1/2—Promulgated November 25, 1935

Plaintiff's Requests

1. Found as requested.
2. Found as requested.
3. Found as requested.
4. Found as requested.
5. Found as requested.
6. Found as requested.
7. Found as stipulated in Paragraph 10 of stipulations.
8. Found as requested.
9. Found as requested.

10. Found as requested except in so far as the importation of beer is in violation of the laws of Pennsylvania.

11. Not found as requested. The importation of beer in so far as in violation of the laws of Pennsylvania is [fol. 207] likewise unlawful under the Constitution and laws of the United States.

12. Not found as requested.

13. Not found because an abstraction. The Act of the Pennsylvania Assembly restricting and prohibiting the importation of beer is a lawful exercise of the public powers of the State and all importations in violation of the laws of the State are forbidden by the Constitution and laws of the United States and unlawful.

14. Not found as requested.

15. Not found as requested.

16. Not found as requested.

17. Not found as requested.

18. Not found as requested.

19. Not found as requested.

20. Not found as requested.

DEFENDANTS' REQUESTS

1. Found as requested.

2. Not found as requested because an abstraction. The Pennsylvania Acts of Assembly were the lawful exercise of the police powers of the State and all importations of intoxicating liquors in violation of the laws of the State are unlawful under the Constitution and laws of the United States.

3. Found as requested.

4. Found as requested.

5. Found as requested.

6. Found as requested.

7. The classification of dealers as distributors and importing distributors is a lawful classification and the im- [fol. 208] position of different license fees is likewise lawful.

8. Found as requested.

9. Not found as requested because argumentative. The requirement of the Pennsylvania law that the officers and directors and a majority of the stockholders of corporation licensee, whether domestic or foreign, be residents of the State is a lawful exercise of the police powers of the State.

10. Not found as requested because argumentative. The injunction prayed for in the Bill should not be granted.

11. Not found as requested because argumentative. It is the policy of the law of Pennsylvania that distillers of whiskey and brewers of malt liquors should not be interested in the sale at retail of the liquors manufactured by them. It is a valid exercise of the police powers of the State to refuse to license a manufacturer to sell at retail or to prohibit stock ownership by a manufacturer of either a distributor or an importing distributor, domestic or foreign. The plaintiff has not shown itself to be eligible to receive authority under the laws of Pennsylvania to be an importing distributor.

12. Not found as requested because argumentative. The plaintiff has not shown itself eligible to receive authority to be an importing distributor under the laws of Pennsylvania.

12-a. Not found as requested because an abstraction.

13. Not found as requested because argumentative. The plaintiff has no right to the injunction prayed for.

14. Not found as requested because an abstraction.

15. Not found as requested because argumentative. The Twenty-first Amendment prohibits the importation of intoxicating liquors into a State if the importation is in violation of the law of the State. The importation here in [fol. 209] question would be in violation of the laws of Pennsylvania. It is in consequence prohibited by the Twenty-first Amendment and by the Webb-Kenyon Act.

16. Not found as requested because argumentative. The Pennsylvania Statute is not unconstitutional by reason of anything contained in Sec. 2 of Article IV of the Constitution of the United States.

17. Not found as requested because argumentative. The Pennsylvania Statute is not unconstitutional because of anything contained in the Fourteenth Amendment of the Constitution of the United States.

18. Found as requested.

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. The facts are found as set forth in the stipulation of counsel.

Conclusions of Law

1. The beer, the claimed right to import which the plaintiff asks to have enforced, cannot be imported except in violation of the laws of Pennsylvania.

2. The Statutes of the State, here in question, are constitutional.

3. The importation is unlawful under the Constitution and laws of the United States.

4. The Bill of the plaintiff is without equity and should be dismissed, with costs.

[fol. 210] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SUR FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact and Conclusions of Law filed with the opinion in the above case are found as set forth therein. Dec. 10, 1935.

(Sgd.) J. W. Thompson, Circuit Judge. (Sgd.) O. B. Dickinson, District Judge. (Sgd.) Wm. H. Kirkpatrick, District Judge.

[fol. 211] In United States District Court for the Eastern District of Pennsylvania, June Sessions, 1935

No. 8953

Premier-Pabst Sales Company, a Corporation of the State of Delaware, Complainant,

vs.

Walter T. Grosscup, W. Worrell Wagner and Leo A. Crossen, Constituting the Pennsylvania Liquor Control Board; Charles F. Kelley, District Attorney of Philadelphia County, Pennsylvania; WillB. Hadley, County Treasurer of Philadelphia County, Pennsylvania; Charles J. Margiotti, Attorney General of the Commonwealth of Pennsylvania; and George H. Earle, 3d, Governor of the Commonwealth of Pennsylvania, Defendants

Final Decree—Filed January 7, 1936

And now, to wit: this 7th day of January, A. D., 1936, the plaintiff having filed its motion for an interlocutory injunction under Section 266 of the Judicial Code as amended (28 U. S. C. A., Sec. 380), and upon hearing thereon before Hon. J. Whitaker Thompson, Circuit Judge, Hon. Oliver B. Dickinson and Hon. William H. Kirkpatrick, District Judges, specially constituted in the District Court of the United States for the Eastern District of Pennsylvania to hear and determine the case, the parties agreed upon and filed a stipulation of admitted facts, and further stipulated and agreed that the hearing on said motion should also be considered as a final hearing for a permanent injunction, it is [fol. 212] Ordered, adjudged and decreed that plaintiff's motion for an interlocutory injunction be and the same is hereby dismissed; and it is further

Ordered, adjudged and decreed that the prayers of the Bill of Complaint for a permanent injunction be denied and the Bill dismissed, Plaintiff to pay costs.

(Sgd.) J. W. Thompson, Circuit Judge. (Sgd.) O. B. Dickinson, District Judge. (Sgd.) W. H. Kirkpatrick, District Judge.

[fol. 213] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Jan. 7, 1936

The above named plaintiff, feeling aggrieved by the decree made and entered in the above entitled proceeding in equity on the 7th day of January, 1936 does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the Assignments of Error filed herewith; and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers, upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States under the rules of the said Court in such case [fol. 214] made and provided, and your petitioner further prays that the proper order relating to the security to be required of it be made.

Dated January 7th, 1936.

Wesley, Wagoner, Troutman & McWilliams, (Sgd.) by C. S. Wesley, Solicitors for and of Counsel with the Plaintiff, 1000 Packard Building, Philadelphia.

[fol. 215] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

And now, to wit: January 7th, 1936 the foregoing appeal to the Supreme Court of the United States is allowed upon the giving by the above mentioned plaintiff of a bond as required by law in the sum of $250.

J. W. Thompson, Circuit Judge. O. B. Dickinson, District Judge. W. H. Kirkpatrick, District Judge.

[fol. 216] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL—Filed Jan. 7, 1936

And now, to wit: January 7th, 1936 comes the plaintiff in the above entitled proceeding in equity, appellant herein, and files the following Assignments of Error upon which it will rely in the prosecution of its appeal from the decree made by this Honorable Court on the 7th day of January, 1936 in the above entitled cause:

I

That the United States District Court for the Eastern District of Pennsylvania erred in denying the interlocutory judgment prayed for by the plaintiff.

[fol. 217] II

That the United States District Court for the Eastern District of Pennsylvania erred in denying the permanent injunction prayed for by the plaintiff.

III

That the United States District Court for the Eastern District of Pennsylvania erred in entering the following decree:

"And now, to wit: this 7th day of January, A. D., 1936 the plaintiff having filed its motion for an interlocutory injunction under Section 266 of the Judicial Code as amended (28 U. S. C. A., Sec. 380), and upon hearing thereon before Hon. J. Whitaker Thompson, Circuit Judge, Hon. Oliver B. Dickinson and Hon. William H. Kirkpatrick, District Judges, specially constituted in the District Court of the United States for the Eastern District of Pennsylvania to hear and determine the case, the parties agreed upon and filed a stipulation of admitted facts, and further stipulated and agreed that the hearing on said motion should also be considered as a final hearing for a permanent injunction, it is

"Ordered, adjudged and decreed that plaintiff's motion for an interlocutory injunction be and the same is hereby dismissed; and it is further

"Ordered, adjudged and decreed that the prayers of the Bill of Complaint for a permanent injunction be denied and the Bill dismissed, plaintiff to pay costs."

IV

That the United States District Court for the Eastern District of Pennsylvania erred in its first Conclusion of Law, which Conclusion is as follows:

"1. The beer, the claimed right to import which the plaintiff asks to have enforced, cannot be imported except in violation of the Laws of Pennsylvania."

V

That the United States District Court for the Eastern District of Pennsylvania erred in its second Conclusion of Law, which Conclusion is as follows:

[fol. 218] "2. The Statutes of the State, here in question, are constitutional."

VI

That the United States District Court for the Eastern District of Pennsylvania erred in its third Conclusion of Law, which conclusion is as follows:

"3. The importation is unlawful under the Constitution and laws of the United States."

VII

That the United States District Court for the Eastern District of Pennsylvania erred in its fourth Conclusion of Law, which Conclusion is as follows:

"4. The Bill of the plaintiff is without equity and should be dismissed, with costs."

VIII

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plain-

tiff's eleventh Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"11. Since under the laws of the Commonwealth of Pennsylvania the importation of beer into the State in interstate commerce from points outside the State is lawful, the State may only restrict and limit the importation thereof in accordance with the limitations imposed by the Constitution of the United States."

"11. Not found as requested. The importation of beer in so far as in violation of the laws of Pennsylvania is likewise unlawful under the Constitution and laws of the United States."

IX

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plaintiff's twelfth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

[fol. 219] "12. Beer, when imported from one state into another, upon arrival in the state of destination falls in the same legal category as like products of domestic origin; and since, under the laws of the Commonwealth of Pennsylvania, beer is a legitimate article of commerce, the State cannot subject imported beer or the dealer thereof to any burdens and impositions which are not imposed upon domestic beer or the dealer thereof."

"12. Not found as requested."

X

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plaintiff's thirteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"13. The Commonwealth of Pennsylvania, in regulating, licensing, taxing or restricting interstate commerce in beer, cannot in the exercise of its police power discriminate against beer or the dealer thereof solely because of its origin outside the state."

"13. Not found because an abstraction. The Act of the Pennsylvania Assembly restricting and prohibiting the importation of beer is a lawful exercise of the public powers

of the State and all importations in violation of the laws of the State are forbidden by the Constitution and laws of the United States and unlawful."

XI

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plaintiff's fourteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"14. Since the manufacture and sale of beer is a lawful business, and so recognized by the laws of the Commonwealth of Pennsylvania, neither the Act of Congress known as the Webb-Kenyon Act nor the Twenty-first Amendment to the Constitution of the United States permits the Commonwealth of Pennsylvania to discriminate against beer of foreign manufacture merely because of its origin outside the state. Such a discrimination constitutes an undue and unconstitutional burden upon interstate commerce."
[fol. 220] "14. Not found as requested."

XII

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plaintiff's fifteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"15. The provisions of the Pennsylvania Beverage License Law and the regulations issued thereunder impose an unconstitutional burden upon interstate commerce in attempting to tax complainant, a distributor of beer manufactured outside the state, at a rate higher than that imposed upon a distributor of beer of domestic origin."
"15. Not found as requested."

XIII

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plaintiff's sixteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"16. The provisions of the Pennsylvania Beverage License Law of 1935, which exact of complainant, a distributor of beer manufactured outside the state, a license fee

in excess of that required of a distributor of beer manufactured within the state, unfairly discriminate against the product of another state solely because of its origin, rest upon no rational basis, are arbitrary and capricious, and deprice complainant of its liberty and property, without due process of law, and deny to it the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States."

"16. Not found as requested."

XIV

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plaintiff's seventeenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

[fol. 221] "17. The provision of the Pennsylvania Beverage License Law of 1935 that all the officers and directors of complainant shall be residents of the Commonwealth of Pennsylvania for two years before complainant can receive a license as an importing distributor of beer, bears no substantial relationship to the State's regulation and control of the business, rests upon no rational basis, is arbitrary and unreasonable, and deprives complainant of its liberty and property, without due process of law, and denies to it the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States."

"17. Not found as requested."

XV

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plaintiff's eighteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"18. The provision of the Pennsylvania Beverage License Law of 1935 that the owners of a majority of complainant's stock shall be residents of the Commonwealth of Pennsylvania for two years before complainant can receive a license as an importing distributor of beer, bears no substantial relationship to the State's regulation and control of the business, rests upon no rational basis, is arbitrary and unreasonable, and deprives complainant of its liberty and property, without due process of law, and denies to it

the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States."

"18. Not found as requested."

XVI

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plaintiff's nineteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"19. Since the complainant possesses, within the Commonwealth of Pennsylvania, tangible property and the good will, trade and custom of a going business there conducted, and since the enforcement of the unconstitutional provisions of the Pennsylvania Beverage License Law of 1935 will involve a direct invasion of these property rights, resulting in irreparable injury thereto, complainant is entitled to injunctive relief.

[fol. 222] "(See: Truax v. Raich, 239 U. S. 33; M. Schnadler Bottling Co. v. Welch, 42 Fed. 561.)"

"19. Not found as requested."

XVII

That the United States District Court for the Eastern District of Pennsylvania erred in refusing to affirm plaintiff's twentieth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"20. An actual and immediate controversy exists between the complainant and defendants who, unless restrained, will enforce the aforesaid unconstitutional provisions of the Pennsylvania Beverage License Law of 1935, the enforcement of which will inflict upon complainant irreparable damage and result in the ruination of its business and the destruction of its property and property rights. Since, by its own terms, the provisions of said Law are severable, and the validity of other provisions of said law is not here involved, an injunction shall issue restraining the defendants from requiring of complainant, a distributor of beer imported from without the State of Pennsylvania, a license fee in excess of that exacted of a distributor of beer manufactured within the State, and further restraining defendants from enforcing those provisions of said law which deny to the complainant an importing distributor's license because

all its officers and directors and the holders of 51% of its stock are not residents of the Commonwealth of Pennsylvania."

"20. Not found as requested."

XVIII

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defendants' second Request for Conclusions of Law, which Request and the answer thereto are as follows:

"2. These acts were passed by the Commonwealth of Pennsylvania in exercise of its police power as reinforced by the Twenty-First Amendment of the Constitution of the United States, in regulation of liquor traffic."

[fol. 223] "2. Not found as requested because an abstraction. The Pennsylvania Acts of Assembly were the lawful exercise of the police powers of the State and all importations of intoxicating liquors in violation of the laws of the State are unlawful under the Constitution and laws of the United States."

XIX

That the United States District Court for the Eastern District of Pennsylvania erred in affirming the defendants' fifth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"5. The distributor licensee, as indicated in Section 2, Subdivision (c), is described and limited to one who engages in the purchase of malt or brewed beverages from Pennsylvania manufacturers only, or from importing distributors and to the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturers, and may not sell for consumption on the premises where sold or in quantities of less than 288 fluid ounces."

"5. Found as requested."

XX

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defendants' seventh Request for Conclusions of Law, which Request and the Answer thereto are as follows:

"7. From these provisions, it appears that the importing distributor is granted superior rights over and above the distributor, in that he may buy either from domestic or foreign manufacturers or domestic or foreign distributors, and may resell not only to retail dispensers but also to other distributors; whereas, distributors are restricted in their purchase from domestic manufacturers and/or importing distributors and are denied the right to purchase from foreign manufacturers or foreign or domestic distributors, or to sell to other distributors. In view of this differentiation of privileges, the difference in the license fee being $400.00 in the case of a distributor and $900.00 in the case of an importing distributor, is not only reasonable but justified."

[fol. 224] "7. The classification of dealers as distributors and importing distributors is a lawful classification and the imposition of different license fees is likewise lawful."

XXI

That the United States District Court for the Eastern District of Pennsylvania erred in affirming the defendant's eighth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"8. A state, under its police power, as reinforced by the Twenty-First Amendment of the Constitution of the United States, may lawfully classify licensees engaging in the traffic of intoxicating liquors, fix license fees for each class, change such classifications and fees from time to time as its Legislature, in its wisdom, deems proper, and may limit the extent to which licensees in various classes may engage in such traffic, and also prescribe the conditions under which such classes of licenses may be issued."

"8. Found as requested."

XXII

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defendants' Ninth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"9. The provision requiring that corporation licensees, whether domestic or foreign, to conform to the requirement that the officers and directors and majority of stockholders

be residents of the Commonwealth of Pennsylvania is entirely reasonable, in view of the well known fact that the regulation of traffic in intoxicating liquors can only be adequately enforced, if at all, through the medium of criminal prosecution, and such means would be unavailing if corporations be permitted to carry on such business with non-resident officers who are beyond the reach of criminal process. This requirement simply places corporate officers upon the same level with individuals. In this, there is no discrimination since the law also requires individuals to be residents."

[fol. 225] "9. Not found as requested because argumentative. The requirement of the Pennsylvania law that the officers and directors and a majority of the stockholders of corporation licensee, whether domestic or foreign, be residents of the State is a lawful exercise of the police powers of the State."

XXIII

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defendants' Tenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"10. Even if the provisions regulating the issuance of the importing distributors' licenses and fees be held unconstitutional, Section 32A, which provides that "The provisions of this act shall be severable, and if any of the provisions shall be held to be unconstitutional, such decision shall not affect the validity of any of the remaining provisions of this act" and "It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein"; leaves the effect of the general prohibitory clauses (Sections 3 and 4) unimpaired. As a consequence of which and the operation of the Twenty-First Amendment, any sales by the complainant would still be unlawful. Under such circumstances, a court of equity will not issue injunctions because its action would be futile and vain."

"—. Not found as requested because argumentative. The injunction prayed for in the Bill should not be granted."

XXIV

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defendants' Eleventh Request for Conclusions of Law, which Request and the answer thereto are as follows:

"11. The public policy of the Commonwealth of Pennsylvania with regard to dispensing of intoxicating liquors, as evidenced by Section 28, Subdivision (f) of the Beverage [fol. 226] License Law of 1933, as amended in 1935, is against permitting the manufacturer of intoxicating liquor of any kind being interested directly or indirectly in or in any wise financing retail or wholesale licensees or dispensers, whether as creditor or as stock owner. For this purpose, Subdivision (3) of Section 28 prohibits stock ownership, inter alia, of either a distributor or an importing distributor by a manufacturer, domestic or foreign. The ownership of the complainant's entire capital stock by the foreign manufacturer is directly in conflict with this public policy and renders the complainant absolutely ineligible to be licensed either as an importing distributor or even as a distributor."

"11. Not found as requested because argumentative. It is the policy of the law of Pennsylvania that distillers of whiskey and brewers of malt liquors should not be interested in the sale at retail of the liquors manufactured by them. It is a valid exercise of the police powers of the State to refuse to license a manufacturer to sell at retail or to prohibit stock ownership by a manufacturer of either a distributor or an importing distributor, domestic or foreign. The plaintiff has not shown itself to be eligible to receive authority under the laws of Pennsylvania to be an importing distributor."

XXV

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defendants' Twelfth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"12. The complainant in this case does not come into a court of equity with clean hands, in that it is operating under a distributor's license issued by the County Treas-

urer of Philadelphia in violation of the law as it was before the amendment of 1935. Section 12 of which law (Act approved December 20, 1933, Special Session 1933-34, P. L. 75) authorizes the issuance of such licenses by the county treasurer only 'to corporations organized in or duly authorized to transact business in this Commonwealth and all of whose officers and directors shall be citizens of the United States who have also been residents of this Commonwealth [fol. 227] for at least three years immediately preceding, the application for license.' The complainant in this case having alleged in the bill that its officers and directors were nonresidents of this Commonwealth."

"12. Not found as requested because argumentative. The plaintiff has not shown itself eligible to receive authority to be an importing distributor under the laws of Pennsylvania."

XXVI

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defendants' Thirteenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"13. Courts will not interfere by injunction where the injury inflicted or threatened is merely the vexation of arrest and punishment of complainant, who is left free to litigate the question of unconstitutionality of the statute or ordinance or its construction or application in making his defense at trial or prosecution for its violation. The remedy at law by indictment and prosecution is presumed to be adequate. It is only where the statute or ordinance is unconstitutional or otherwise invalid, and where, in the attempt to enforce it, there is a direct invasion of *property rights* resulting in irreparable injury, that an injunction will issue to restrain the enforcement thereof. Both of these elements are indispensable, and the latter element is not present where, as here, it appears that the injury or loss to the complainant's business or rights of property would be only such as would incidentally flow from the arrest or prosecution thereunder.

"Long v. Metzger et al., 301 Pa. 449-454."

"13. Not found as requested because argumentative. The plaintiff has no right to the injunction prayed for."

XXVII

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defend-
[fol. 228] ants' fifteenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"15. The Twenty-First Amendment to the Federal Constitution must be regarded as divesting intoxicating liquor of any protection of the Interstate Commerce Clause. The right of a state to prohibit totally, as is in said Twenty-first Amendment guaranteed, necessarily involves the right to prohibit conditionally, and especially so where the conditions are neither discriminatory or unreasonable, as here."

"15. Not found as requested because argumentative. The Twenty-first Amendment prohibits the importation of intoxicating liquors into a State if the importation is in violation of the law of the State. The importation here in question would be in violation of the laws of Pennsylvania. It is in consequence prohibited by the Twenty-first Amendment and by the Webb-Kenyon Act."

XXVIII

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defendants' sixteenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"16. The provisions of Section 2 of Article IV of the Federal Constitution, providing the citizens of each state shall be entitled to all privileges and immunities of the citizens of the several states, cannot be invoked by this complainant under the well settled rule that a corporation is not a citizen within the meaning of this provision of the Constitution."

"16. Not found as requested because argumentative. The Pennsylvania Statute is not unconstitutional by reason of anything contained in Sec. 2 of Article IV of the Constitution of the United States."

XXIX

That the United States District Court for the Eastern District of Pennsylvania erred in its answer to the defend-

ants' seventeenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

[fol. 229] "17. Neither does the clause of the Fourteenth Amendment, forbidding a state to deny to any person within its jurisdiction the equal protection of the law, apply, because laws of the State of Pennsylvania do not deny to the complainant equal protection of its laws. The complainant is granted privileges equal with licensees of the same class, whether individual or domestic or foreign corporation. Neither can said clause be invoked by the complainant's parent company, the Premier Pabst Corporation (the manufacturing brewer), because it is not a complainant in this bill, nor is it a person within the jurisdiction of the State of Pennsylvania."

"17. Not found as requested because argumentative. The Pennsylvania Statute is not unconstitutional because of anything contained in the Fourteenth Amendment of the Constitution of the United States."

XX

That the United States District Court for the Eastern District of Pennsylvania erred in affirming the defendants' eighteenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"18. The right to engage in the sale of intoxicating liquors is not one of the privileges or immunities of citizens of the United States, which the states are thereby forbidden to abridge. Nor can such restrictive statutes be said to deprive persons of liberty or property without due process of law. Nor, if not entirely arbitrary in their discrimination between persons, do they deprive anyone of the equal protection of the law. Phillips v. Mobile, 208 U. S. 472."

"18. Found as requested."

Wherefore the appellant prays that the aforesaid decree be reversed, and that the case be remanded to the District Court of three judges, with directions to grant such further relief and in such form as the Supreme Court of the United States shall deem just.

Wesley, Wagoner, Troutman & McWilliams, by C. S. Wesley, Solicitors for and of Counsel with Appellant, 1000 Packard Building, Philadelphia.

[fol. 230] IN UNITED STATES DISTRICT COURT

MOTION FOR INJUNCTION, PENDING DETERMINATION OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Dec. 27, 1935

To the Honorable J. Whitaker Thompson, the Honorable Oliver B. Dickinson, and the Honorable William H. Kirkpatrick, Specially Constituted in the District Court of the United States for the Eastern District of Pennnsylvania to Hear and Determine the Above Case:

Comes now the plaintiff and moves the Court for a temporary injunction, pending the hearing and determination of its appeal to the Supreme Court of the United States from the decree of this Court denying an interlocutory and final injunction; and in support of said motion, respectfully represents:

[fol. 231] 1. That it has taken an appeal from the decree of this Court to the Supreme Court of the United States.

2. That unless a temporary injunction be issued, pending the hearing and determination of said appeal, the plaintiff will suffer irreparable injury because of the circumstances hereinafter set forth.

3. That plaintiff is informed, believes, and therefore avers that the defendants, without waiting for the determination of plaintiff's appeal to the Supreme Court of the United States, intend to enforce against the plaintiff the civil and criminal provisions of the Pennsylvania Beverage License Law in this case involved, the enforcement of which will result in the destruction of the plaintiff's business and the loss of its good will, trade and custom.

4. That should defendants enforce the said provisions of said Pennnsylvaia Beverage License Law while said appeal is pending, and should plaintiff be successful in its said appeal, it would nevertheless be deprived of the fruits thereof as the enforcement of said provisions of the said Act prior to the entry of the decree of the Supreme Court of the United States would result in the destruction of the plaintiff's property and property rights aforesaid, for the loss of which the plaintiff would be left without remedy, as there is no procedure under which it could secure reparation from the defendants.

5. That no harm can come to the defendants and the Commonwealth of Pennsylvania, for whom they are acting, by the granting of an injunction pending the determination of the plaintiff's appeal to the Supreme Court of the United States.

6. That the questions involved in this case and on said appeal are null; that under cognate facts, the District Court of the United States for the District of Minnesota and the [fol. 232] District Court of the United States for the Southern District of California have issued injunctions, restraining the officers and agents of the aforesaid states from enforcing provisions of the laws of Minnesota and California involving substantially the principles here involved; that notwithstanding the decision of your Honorable Court, plaintiff respectfully persists in its belief that it is entitled to an injunction as prayed for in the bill of complaint.

Wherefore plaintiff moves that an injunction issue, pending the hearing and determination of its appeal to the Supreme Court of the United States, and that until the further order of this Court, the defendants and each of them, and their and each of their deputies, officers, servants, and employees, and any and every person acting under and by virtue of their authority, be enjoined and restrained from enforcing or executing the following provisions of the Pennsylvania Beverage License Law and any regulations purporting to be issued thereunder:

(a) Sections 18 and 19 (b) and (c), which exact, in the acquisition of a license as an "importing distributor" of malt beverages, the payment of a license fee and the execution of a bond in a penal sum in excess of the fees and penal sums required of a "distributor" of like domestic beverages;

(b) Sections 5 (b) and 11 (c), which preclude plaintiff from the acquisition of a license as a "distributor" and/or "importing distributor" of malt beverages because of the non-residence in Pennsylvania for a period of two years preceding the license application of all of plaintiff's officers and directors and the owners of 51% of its capital stock.

Wesley, Wagoner, Troutman & McWilliams, by C. S. Wesley, Solicitors for and of Counsel with Plaintiff, 1000 Packard Building, Philadelphia.

[fol. 233] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMMONWEALTH OF PENNSYLVANIA'S OBJECTIONS TO GRANTING OF MOTION FOR INJUNCTION PENDING DETERMINATION OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 7, 1936

And now, to wit, this 7 day of January, A. D. 1936, comes Commonwealth of Pennsylvania, acting through the Attorney General, and objects to the granting of the Plaintiff's motion for an injunction pending determination of appeal to the Supreme Court of the United States for the following reasons:

1. Upon entry of Decree dismissing Bill in Equity and allowance of the appeal, this Court has no further jurisdiction of the controversy to enable it either to grant any [fols. 234 & 235] further restraining orders or interlocutory injunctions.

Telephone Co. v. Louisiana Public Service Commission, 260 U. S. 212, 67 L. Ed. 217.

2. Assuming this Court has jurisdiction it should not exercise the same in view of the fact that the Plaintiff is by the use thereof enabled to transact a prohibited business delegated exclusively to the States by the Acts of Congress and confirmed by the Twenty-first Amendment.

3. The Plaintiff has no property right to sell intoxicating liquor and if it desires to carry on that business pending the appeal, it should be made to apply for a license and comply with the State Laws or else suspend business.

4. If Plaintiff desires to continue its appeal, it should enter security in a sum sufficient to cover not only the license fee but the amount of penalties to which it has subjected itself under the Pennsylvania Malt Liquor License Act for carrying on its business without a license.

Charles J. Margiotti, by Grover C. Ladner, Deputy Attorney General.

[fl. 236] IN UNITED STATES DISTRICT COURT

ORDER GRANTING INJUNCTION PENDING DETERMINATION OF APPEAL—Filed January 7, 1936

And now, to wit: this 7 day of January, A. D. 1936 upon consideration of the foregoing motion for injunction pending determination of appeal to the Supreme Court of the United States, it appearing that immediate and irreparable damage will be caused by reason of the enforcement of the civil and criminal provisions of the Pennsylvania Beverage License Law involved in this case, for the reasons set forth in said motion, it is

Ordered, adjudged and decreed that Walter T. Grosscup, W. Worrell Wagner and Leo A. Crossen, constituting the Pennsylvania Liquor Control Board; Charles F. Kelly, District Attorney of Philadelphia County, Pennsylvania; [fol. 237] WillB. Hadley, County Treasurer of Philadelphia County, Pennsylvania; Charles J. Margiotti, Attorney General of the Commonwealth of Pennsylvania; and George H. Earle, 3d, Governor of the Commonwealth of Pennsylvania; be and they hereby are enjoined and restrained:

(a) From enforcing or executing or attempting to enforce or execute those provisions of the Pennsylvania Beverage License Law, particularly Sections 18 and 19 (b) and (c) thereof, and any regulations issued thereunder, which exact, in the acquisition of a license as an "importing distributor" of malt beverages the payment of a license fee and the execution of a bond in a penal sum in excess of the fees and penal sums required of a "distributor" of domestic beverages;

(b) From enforcing or executing or attempting to enforce or execute those provisions of the Pennsylvania Beverage License Law, particularly Sections 5 (b) and 11 (c) thereof, and any regulations issued thereunder, which preclude plaintiff from the acquisition of a license as a "distributor" and/or "importing distributor" of malt beverages because of the non-residence in Pennsylvania for a period of two years preceding the application of all of plaintiff's officers and directors and the owners of 51% of its capital stock;

(c) From instituting or causing to be instituted against plaintiff any proceeding or prosecution, civil or criminal, for its failure to obtain an "importing distributor's" license, as prescribed in said law, for the transaction of its business of importing and distributing the malt beverages manufactured outside the Commonwealth of Pennsylvania, from imposing, or attempting to impose, any of the penalties for failure to obtain such "importing distributor's" license; from seizing, or attempting to seize, and from selling, or attempting to sell, any property of the Complainant for failure to obtain such license; from forfeiting, or at-[fol. 238-240] tempting to forfeit to the Commonwealth of Pennsylvania, for failure to obtain such license, any malt and brewed beverages imported into the Commonwealth of Pennsylvania; and from interfering with, or attempting to prevent, any common or private carrier from transporting malt and brewed beverages into or through the Commonwealth of Pennsylvania consigned to Complainant's customers or to the Complainant.

Said injunction shall continue until the determination by the Supreme Court of the United States of plaintiff's appeal from the refusal of this Court to grant an interlocutory and/or final injunction, and until the further order of this Court.

Bond sur injunction to be filed in the amount of $2,000.

(Sgd.) J. W. Thompson, Circuit Judge. (Sgd.) O. B. Dickinson, District Judge. (Sgd.) W. H. Kirkpatrick, District Judge.

[fols. 241 & 242] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 243] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO REPLY, AND OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Feb. 10, 1936

To the Clerk of the Supreme Court of the United States:

Pursuant to the provisions of General Rule 13, paragraph 9 thereof, the appellant files this, its designation of points upon which it intends to rely and of the parts of the record which it regards necessary for the consideration thereof:

A. The points upon which appellant will rely are as follows:

I. That the District Court of the United States for the Eastern District of Pennsylvania erred in denying the interlocutory injunction prayed for by the plaintiff.

[fol. 244] II. That the District Court of the United States for the Eastern District of Pennsylvania erred in denying the permanent injunction prayed for by the plaintiff.

III. That the District Court of the United States for the Eastern District of Pennsylvania erred in entering the following final decree:

"And now, to wit: this 7th day of December, A. D., 1935, the plaintiff having filed its motion for an interlocutory injunction under Section 266 of the Judicial Code as amended (28 U. S. C. A., Sec. 380), and upon hearing thereon before Hon. J. Whitaker Thompson, Circuit Judge, Hon. Oliver B. Dickinson and Hon. William H. Kirkpatrick, District Judges, specially constituted in the District Court of the United States for the Eastern District of Pennsylvania to hear and determine the case, the parties agreed upon and filed a stipulation of admitted facts, and further stipulated and agreed that the hearing on said motion should also be considered as a final hearing for a permanent injunction, it is

"Ordered, adjudged and decreed that plaintiff's motion for an interlocutory injunction be and the same is hereby dismissed; and it is further

"Ordered, adjudged and decreed that the prayers of the Bill of Complaint for a permanent injunction be denied and the Bill dismissed, Plaintiff to pay costs."

IV. That the District Court of the United States for the Eastern District of Pennsylvania erred in failing to hold that those provisions of the Pennsylvania Beverage License Law which exacts a license fee and a bond as a prerequisite for securing a license to conduct the business of distributing brewed beverages manufactured outside the State in excess of the fee and the bond required of distributors of like beverages manufactured within the State, unfairly discriminate against the product of another state, and the distributor thereof, merely because of its origin, and constitute an undue and unreasonable burden on interstate commerce, in violation of the commerce clause of the Constitution of the United States.

[fol. 245] V. That the District Court of the United States for the Eastern District of Pennsylvania erred in holding that the Twenty-first Amendment to the Constitution of the United States permits a State to discriminate against beer manufactured in another State, and the distributor thereof, merely because of its origin.

VI. That the District Court of the United States for the Eastern District of Pennsylvania erred in failing to hold that those sections of the Pennsylvania Beverage License Law which exact a license fee and a bond as a prerequisite for securing a license to conduct the business of distributing brewed beverages manufactured outside the State in excess of the fee and the bond required of distributors of like beverages manufactured within the State, are unreasonable, arbitrary and capricious, and deprive the plaintiff of its liberty and property without due process of law, and deny to it the equal protection of the laws, under the Fourteenth Amendment to the Constitution of the United States.

VII. That the District Court of the United States for the Eastern District of Pennsylvania erred in failing to hold that those sections of the Pennsylvania Beverage License Law which require, as a prerequisite to a corporation's securing a license to distribute brewed beverages, that all of its officers and directors and the majority own-

ers of its stock shall have been residents of the Commonwealth of Pennsylvania for two years preceding the application, are unreasonable, arbitrary, and bear no reasonable relationship to the State's regulation of the business, and deprive plaintiff of its property without due process of law, and deny to it the equal protection of the laws, under the Fourteenth Amendment to the Constitution of the United States.

[fol. 246] 2. The portion of the record which appellant believes necessary for the consideration thereof are as follows:

Docket Entries.

Bill of Complaint (Exclusive of Exhibit "A" thereof).

Injunction Affidavit of L. M. Arbogast.

Injunction Affidavit of H. Perlstein.

Motion for Interlocutory Injunction.

Answer of W. T. Grosscup, et al.

Answer of WillB. Hadley, County Treasurer.

Answer of Charles F. Kelley, District Attorney.

Stipulation that Hearing shall be Considered as a Hearing on Application for a Permanent Injunction.

Stipulation of Counsel for Affirmance of Findings of Fact.

Plaintiffs Requests for Conclusions of Law.

Defendants' Requests for Conclusions of Law.

Opinion, and Court's Findings of Fact and Conclusions of Law, and Answers to Plaintiff's and Defendants' Requests for Conclusions of Law.

Order of Court re Findings of Fact and Conclusions of Law.

Final Decree.

Petition for Appeal.

Order Allowing Appeal.

Statement as to Jurisdiction of the Supreme Court of the United States of Appeal.

Waiver of Opposing Statement of Jurisdiction.

Assignment of Errors and Prayer for Reversal.

Motion for Temporary Injunction pending Determination of Appeal by the Supreme Court of the United States.

[fols. 247 & 248] Defendants' Objections to Granting Temporary Injunction, Pending Determination of Appeal by the Supreme Court of the United States.

Order granting Temporary Injunction.

Statement of Points upon which Appellant Intends to Rely and the Parts of the Record to be Printed.

Appellees' Acceptance of Service of Statement of Points upon which Appellant Intends to Rely and the Parts of the Record to be Printed, and Consent to a Hearing on the Parts of the Record thus designated by Appellant.

Wesley, Wagoner, Troutman & McWilliams, by J. W. McWilliams, Solicitors for Appellant, 1000 Packard Building, Philadelphia.

On behalf of the Appellees, I accept service of the within Statement of Points upon which Appellant Intends to Rely and the Parts of the Record to be Printed, and consent to a hearing on the parts of the record designated by the Appellant.

Grover C. Ladner, Deputy Atty. General, Solicitor for Appellees.

Feb. 8, 1936.

[fol. 249] [File endorsement omitted.]

Endorsed on cover: File No. 40,299. E. Pennsylvania, D. C. U. S. Term No. 745. Premier-Pabst Sales Company, appellant, vs. Walter T. Grosscup, W. Worrell Wagner and Leo A. Crossen, Constituting the Pennsylvania Liquor Control Board, et al. Filed February 6, 1936. Term No. 745, O. T., 1935.

FILE COPY

Office Supreme Court
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 745

PREMIER-PABST SALES COMPANY,
Appellant,

vs.

WALTER T. GROSSCUP, W. WORRELL WAGNER, AND LEO A. CROSSEN, CONSTITUTING THE PENNSYLVANIA LIQUOR CONTROL BOARD, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AS TO JURISDICTION.

C. S. WESLEY,
Counsel for Appellant.

WESLEY, WAGONER, TROUTMAN
& MCWILLIAMS,
Of Counsel.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUNE SESSIONS, 1935.

No. 8953.

PREMIER-PABST SALES COMPANY, A CORPORATION OF THE STATE OF DELAWARE,

Complainant,

vs.

WALTER T. GROSSCUP, W. WORRELL WAGNER, AND LEO A. CROSSEN, CONSTITUTING THE PENNSYLVANIA LIQUOR CONTROL BOARD; CHARLES F. KELLEY, DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, PENNSYLVANIA; WILL B. HADLEY, COUNTY TREASURER OF PHILADELPHIA COUNTY, PENNSYLVANIA; CHARLES J. MARGIOTTI, ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA; AND GEORGE H. EARLE, 3D, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA,

Defendants.

STATEMENT AS TO JURISDICTION OF APPEAL.

MAY IT PLEASE THE COURT:

The appellant, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represents:

A.

Statutory Provision Sustaining Jurisdiction.

Section 266 of the Judicial Code as last amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 936, 938 (U. S. Code, Title 28, Sec. 380), relating to appeals to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory injunction, and from a final decree granting or denying a permanent injunction, in suits to suspend or restrain "the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, provides that:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case * * * The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B.

Statute of the State, the Validity of Which is Involved.

The following sections of the "Pennsylvania Beverage License Law", Act of July 18, 1935, P. L. —, are here involved:

Section 2 thereof, which defines distributors and importing distributors of malt or brewed beverages as follows:

> "(d) The term 'distributor' means and includes persons licensed by the board to engage in the purchase, only from Pennsylvania manufacturers and from importing distributors, and the resale of malt

(liquors) or brewed beverages in the original sealed packages, as prepared for the market by the manufacturer, but not for consumption on the premises where sold, and in quantities of not less than two hundred eighty-eight fluid ounces.

"(e) The term 'importing distributors' means and includes persons licensed by the board to engage in the purchase from manufacturers and other persons located outside this Commonwealth, and from persons licensed as manufacturers and distributors under this Act, and the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturer, but not for consumption on the premises where sold, and in quantities of not less than two hundred eighty-eight fluid ounces."

Sections 19 (b) and (c) thereof, which require the payment of license fees as follows:

"(b) In the case of a distributor, the license fee shall be $400.00 and shall be paid to the board."

"(c) In the case of an importing distributor, the license fee shall be $900.00 and shall be paid to the board."

That portion of Section 18 thereof requiring all licensees to furnish a bond to the Commonwealth of Pennsylvania as follows:

"The penal sum of bonds filed by distributors shall be $1,000.00, and for importing distributors $2,000.00."

Section 5 (b) thereof, which provides:

"Such licenses shall be issued only to * * * reputable corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania. Such licenses shall be issued to corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania only when it appears that all of the

officers and directors of the corporation are citizens of the United States, and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, and that at least fifty-one percentum of the capital stock of such corporation is actually owned by individuals who are citizens of the United States, and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application."

C.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered on January 7th, 1936. The application for appeal was presented on January 7th, 1936.

D.

Nature of Case and Ruling Below.

The plaintiff is a Delaware corporation, duly licensed to transact business in the State of Pennsylvania, where it is engaged solely in the business of selling at wholesale, in Pennsylvania, beer manufactured outside that State. In the course of its business, it secures orders from its customers for the purchase of the beer, and in the fulfillment thereof in turn purchases the beer from the brewer. The plaintiff ships the beer thus purchased from the breweries either at Milwaukee, Wisconsin, or at Peoria, Illinois, f. o. b. railroad cars, to its customers at their places of business in Pennsylvania. Plaintiff's profit is measured by the difference between the price charged it by the brewer and the price paid to it by its several customers. The Bill was brought against the defendant State officers to restrain them from enforcing the provisions of the Act which require an importer of and dealer in beer manufactured out-

side the State the payment of a license fee of $900.00, and filing of a bond in the amount of $2,000.00, while requiring of a dealer in beer manufactured within the State a license fee of only $400.00 and a bond of but $1,000.00; and from the enforcement of those provisions restricting the granting of licenses to those corporations all of whose officers and directors have been residents of the State for at least two years prior to the date of the license application, and at least fifty-one per cent. of whose capital stock is owned by individuals who have been residents of the State for a period of at least two years prior thereto. The Bill was framed so as to determine the questions: (a) whether, since the passage of the Twenty-first Amendment to the Constitution of the United States, a State may impose direct burdens on interstate commerce and discriminate against beer manufactured outside the State, and the importer or dealer therein, and in favor of beer manufactured within the State, and the dealer therein, solely because of the origin of the product; and (b) whether the qualifications required of a licensee are not so arbitrary, unreasonable, and capricious as to deprive plaintiff of its property without due process of law and deny to it the equal protection of the laws.

There are no facts in dispute, as the parties filed a stipulation of record setting forth the admitted facts and further stipulated that the hearing on the motion for an interlocutory injunction should be considered as a final hearing for a permanent injunction. The court held that the provisions complained of were authorized by the Twenty-first Amendment, and refused the motion for an interlocutory injunction and the prayer for a final injunction, and entered its final decree dismissing the bill.

Since the passage of the Twenty-first Amendment two lower Federal courts have held that the Twenty-first Amend-

ment does not exempt intoxicating liquors from the provisions of the commerce clause and the other provisions of the Constitution of the United States, and that a State may not discriminate against interstate commerce in intoxicating liquors, nor arbitrarily and capriciously regulate the traffic therein. See: *Triner Corporation* v. *Arundel,* 11 Fed. Supp. 145 (1935), and *Young's Market Co.* v. *State Board of Equalization,* 12 Fed. Supp. 140 (1935).

The case at bar is the only decision in the Federal courts which has construed the Twenty-first Amendment as relieving the State, in regulating the traffic in intoxicating liquors, from the limitations prescribed by the Constitution of the United States.

The important and as yet unsettled questions of law to be determined by this Court in the present appeal are:

1. Where the importation and sale of beer is, by the laws of a State, recognized as a lawful business, subject to prescribed regulations, does the Twenty-first Amendment to the Constitution of the United States authorize the State to burden interstate commerce by discriminating against beer manufactured in another State, and the dealer therein, solely because of its origin?

2. Does the Twenty-first Amendment to the Constitution of the United States authorize a State to enact regulations unreasonably and arbitrarily limiting the classes of persons authorized to engage in the distribution of beer?

The determination of these questions is of importance to the Commonwealth of Pennsylvania and the several States which permit the manufacture and sale of intoxicating liquors, as well as to the importers and dealers therein and to the public generally.

E.

Cases Believed to Sustain Jurisdiction.

The following decisions of the Supreme Court of the United States are believed to sustain jurisdiction of this appeal:

Wilkinson v. *Rohrer*, 140 U. S. 545.
Scott v. *Donald*, 165 U. S. 58.
Adams Express Co. v. *Kentucky*, 238 U. S. 190.
Jas. Clark Distilling Co. v. *Western Md. R. R. Co.*, 242 U. S. 311.
United States v. *Hill*, 248 U. S. 420.
McCormick & Co. v. *Brown*, 286 U. S. 131.
Baldwin v. *Seelig*, 294 U. S. 511.
Guy v. *City of Baltimore*, 100 U. S. 434.
Welton v. *Missouri*, 91 U. S. 275.
Louis K. Liggett Co. v. *Baldridge*, 278 U. S. 105.

Conclusion.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Section 266 of the Judicial Code, as amended by the Act of February 13, 1925.

Respectfully submitted,

WESLEY, WAGONER, TROUTMAN & MCWILLIAMS,
By C. S. WESLEY,
Attorneys for Appellant.

FILE COPY

FILED
APR 9 1936
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1935

No. 745

PREMIER-PABST SALES COMPANY, a corporation of the State of Delaware,

Complainant,

vs.

WALTER T. GROSSCUP, W. MORRELL WAGNER and LEO A. CROSSEN, constituting the PENNSYLVANIA LIQUOR CONTROL BOARD; CHARLES F. KELLEY, District Attorney of Philadelphia County, Pennsylvania; WILL B. HADLEY, County Treasurer of Philadelphia County, Pennsylvania; CHARLES J. MARGIOTTI, Attorney General of the Commonwealth of Pennsylvania; and GEORGE H. EARLE, 3d, Governor of the Commonwealth of Pennsylvania,

Defendants.

BRIEF OF APPELLANT

C. S. WESLEY,
W. MCWILLIAMS,
of Philadelphia, Pa.,
M. J. DONNELLY,
C. J. LYNCH, JR.,
of Cedar Rapids, Iowa,
Attorneys for Appellant.

HAWKEYE-RECORD PRESS, MOUNT VERNON, IOWA

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 745

PREMIER-PABST SALES COMPANY, a corporation of the State of Delaware,

Complainant,

vs.

WALTER T. GROSSCUP, W. MORRELL WAGNER and LEO A. CROSSEN, constituting the PENNSYLVANIA LIQUOR CONTROL BOARD; CHARLES F. KELLEY, District Attorney of Philadelphia County, Pennsylvania; WILL B. HADLEY, County Treasurer of Philadelphia County, Pennsylvania; CHARLES J. MARGIOTTI, Attorney General of the Commonwealth of Pennsylvania; and GEORGE H. EARLE, 3d, Governor of the Commonwealth of Pennsylvania,

Defendants.

BRIEF OF APPELLANT

REFERENCE TO THE OFFICIAL REPORT OF THE OPINION OF THE LOWER COURT

The opinion of the lower court in this case is reported in 12 Federal Supplement 970, February 17, 1936, Advance sheet.

JURISDICTION

A statement as to jurisdiction has been filed wherein definite reference to the statutory provision under which jurisdiction is invoked and to cases believed to sustain such jurisdiction is made, the same being separately printed pursuant to Rule 12 of this Court, (par. 1), and probable jurisdiction has heretofore been noted by this Court.

STATEMENT OF THE CASE

This is an appeal from a final decree, entered in the United States District Court for the Eastern District of Pennsylvania by a three-judge court convoked under §266 of the Judicial Code (tit. 28, §380, USCA), dismissing Complainant's Bill and denying the injunction therein prayed to restrain the officers of the State of Pennsylvania (appellees herein) from enforcing against appellant, a wholesale beer distributor within the State of Pennsylvania, those provisions of the Pennsylvania Beverage License Law imposing upon Appellant, and the malt and brewed beverages sold and distributed by it, discriminatory burdens and license fees solely by reason of their origin outside the State of Pennsylvania, and from enforcing against appellant those provisions of said Act which impose unreasonable and arbitrary requirements for the issuance of a license.

The undenied allegations of the Bill of Complaint and the Stipulation of Facts filed by the parties to the cause support the following:

Statement Of Facts

Appellant is a corporation organized and existing under the laws of the State of Delaware, duly registered as a foreign corporation under the laws of the State of Pennsylvania, and engaged in said state, as well as in numerous other states, in the business of soliciting orders for the sale, at wholesale, of Pabst beer and malt beverages manufactured in the States of Wisconsin and Illinois by the Premier-Pabst Corporation, from whom such beer is purchased by appellant. In fulfillment of orders taken by appellant from licensed distributors in the State of Pennsylvania, the beer is shipped from the breweries of the Premier-Pabst Corporation at Milwaukee, Wisconsin, or Peoria, Illinois, f. o. b. railroad cars in interstate traffic, and delivered to such purchasers at their respective places of business in Pennsylvania. (Stipulation of facts, par. 4 and 6, R. 87).

At the time of the passage of the Act in question and at the time of the commencement of this action, appellant maintained an office and place of business at Philadelphia and was the holder of a "Liquor Distributor's License," issued by the State of Pennsylvania under the "Malt Liquor License Law of 1933," by which license appellant was authorized "to engage in the business, inter alia, of importing malt and brewed beverages manufactured outside the State of Pennsylvania and distributing such beverages within the state." (Stipulation of Facts, par. 9, R 88). Appellant has expended approx-

imately $400,000 since April 7, 1933, in advertising, sales promotion, and other incidental expenses for the establishment of its trade, custom, and good will in the sale of Pabst beer in the State of Pennsylvania, and by reason thereof enjoys a large demand for its Pabst Beer within said state, selling in the year 1934 in excess of 50,000 barrels of such beer to its customers in said state. (Stipulation of Facts, par. 7, 8, R. 87, 88).

By the provisions of Section 32 (b) Sub-sec (a) of the Act of July 18, 1935, all licenses (such as the one held by appellant) issued to distributors prior to the effective date of said Act, were to remain in force for such period of a whole license year as the amount of the license fee paid bears to the amount of the license fee payable for a distributor's license under the Act of July 18, 1935, the rights of appellant, as the holder of a "Distributor's License" issued under the prior law, being identical with the rights of a holder of a "Distributor's License" under the Act of July 18, 1935. However, a distributor engaged under his Distributor's license issued pursuant to the provisions of the previous law, in purchasing beer from a manufacturer outside the State of Pennsylvania was, by the Act of July 18, 1935, and Regulation No. 51 promulgated by the Pennsylvania Liquor Control Board July 25, 1935, pursuant to the provisions of said Act, denied the right to continue such business unless he obtained an additional license, denominated by the act an "Importing Distributor's License," for which additional fees were required by the Act to be paid. (Stipulation of Facts, par. 10, R. 88; and Rule 51, Appendix —). The authority conferred upon the holder of a "Distributor's License" was expressly limited by Section 2 (d) and Section 5 (b) of the Act of 1935 to

"engage in the purchase only from Pennsylvania manufacturers and from importing distributors * * *"

The Act of July 18, 1935, thus purports to establish two classes of distributor's licenses (a) a Distributor's license authorizing purchase only from a manufacturer within the state or from the holder of an Importing Distributor's license, and (b) an Importing Distributor's license authorizing purchase from a manufacturer outside the state. It requires of the former an annual license fee of $400 and a bond of $1000, and of the latter an anuual license fee of $900 and a bond of $2000, and makes, as its sole criteria for determining whether the license required of one shall be a Distributor's License or an Importing Distributor's license, the source or origin of the product in which such person deals as coming from within or without the State of Pennsylvania. (§2 (d) and (e); §5 (b); §19 (b) and (c); §18, Act July 18, 1935, R. 42-76). The only distinction between the two classes of licenses is that indicated by the names themselves.

The present officers and directors of appellant corporation are all citizens and residents of the United States but are not residents of the State of Pennsylvania, nor are any of the present stockholders of appellant corporation residents of the State of Pennsylvania. (Stipulation of Facts, par. 4, 5, R. 87).

By Sec. 5, Sub-sec. (b) it is provided:

"Such licenses shall be issued to corporations duly organized or registered under the laws of the Commonwealth of Pennsylvania, only when it appears that all the officers and directors of the coorporation are citizens of the United States, and have been

residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, and that at least fifty-one percent of the capital stock of such corporation is actually owned by individuals who are citizens of the United States and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application."

The Bill of Complaint, filed by Complainant on behalf of itself and all other persons and corporations similarly situated, praying an interlocutory injunction and a permanent injunction upon final hearing, was filed in the United States District Court for the Eastern District of Pennsylvania, (R. 4), and on August 9, 1935, a Judge of that Court entered an order convoking a three-judge Federal Court under §266 of the Judicial Code. (R. 1). To the Bill of Complaint, the defendants filed their answers. (R. 31 to 85). Following hearing upon plaintiff's application for an interlocutory injunction, the parties filed their Stipulation for Affirmance of Findings of Fact, (R. 86 to 89), and their Stipulation that the hearing upon plaintiff's application for an interlocutory injunction should be treated and considered by the Court as a hearing on the application for a permanent injunction. (R. 85) Thereafter plaintiff filed its Request for Conclusions of Law, (R. 89 to 95), and defendants filed their Request for Conclusions of Law. (R. 95 to 99). Upon hearing had, the Court, on December 10, 1935, filed its opinion in the cause, together with its Findings of Fact and Conclusions of Law, and Answer to the Requests of Plaintiff and Defendants for Conclusions of Law. (R. 100 to 109). On January 7, 1936, the final decree sought to be reviewed was entered. (R. 110).

Plaintiff in its Bill of Complaint prayed

(1) that the action of the General Assembly of the Commonwealth, known as the Beverage License Law, as enacted and approved July 18, 1935, being Act 398 of the Sessions of the General Assembly for 1935, be declared and adjudged unconstitutional and void as in contravention of the rights of the Complainant under §8 of Article I of the Constitution of the United States, §2 of Article IV of the Constitution of the United States, and the 14th Amendment to the Constitution of the United States, to the extent that Complainant's rights are thereby violated;

(2) that said sections 5 (A), 5 (B), 18, 19 (C), 23 (E), 23 (G), 23 (H), 23 (P), 23 (Z), 29 (A), and 29 (B) of said Act of the Commonwealth of Pennsylvania be declared and adjudged to be unconstitutional and void, as in contravention of the Complainant's rights under §8 of Article I of the Constitution of the United States, §2 of Article IV of the Constitution of the United States, and the 14th Amendment thereto, to the extent that Complainant's rights are thereby violated;

(3) that the defendants, and each of them, their respective appointees, assistants, employees, and successors in office, and each of them, be enjoined from in any way or manner whatsoever enforcing against Complainant, and other importing distributors of malt and brewed beverages similarly situated, the provisions of said Beverage License Law, and the regulations issued thereunder, including Regulation 51, or any part or parts thereof, insofar as they contravene the provisions of the Constitution of the United States, and insofar as they affect the rights of the Complainant to import and sell malt and brewed beverages within the Commonwealth of Pennsylvania, and from attempting to enforce against Complainant, and other importing distributors of malt and brewed beverages

similarly situated within the Commonwealth of Pennsylvania, any of the provisions of said statute or regulations in said complaint complained of, and from instituting or causing to be instituted any prosecutions or proceedings, civil or criminal, against this Complainant, its officers, agents, or employees, to enforce any of such provisions of said statute or regulations.

SPECIFICATIONS OF ASSIGNED ERRORS

The Assignments of Error upon which appellant will rely present the questions which may be thus summarized:

1. That the Court below erred in holding that the provisions of the Pennsylvania "Beverage License Law" which discriminate against the malt and brewed beverages manufactured outside the State of Pennsylvania by imposing burdens thereon, and the dealer therein, which are not imposed upon like beverages manufactured within the state, are valid and not in excess of the powers of such state as limited by Article 1, Section 8, of the Constitution of the United States;

2. That the Court below erred in denying the appellant the injunctive relief prayed in its Bill of Complaint and in dismissing the same;

3. That the Court below erred in holding that the provisions of the Pennsylvania Beverage License Law requiring all officers, directors, and a majority of the stockholders of a corporation applying for an "importing distributor's" license to be residents of the State of Pennsylvania are valid and not in excess of the powers of the State as limited by the 14th Amendment to the Constitution of the United States.

The Assignments of Error which present the foregoing questions are as follows:

I

The Court erred in denying the interlocutory injunction prayed by plaintiff. (Assignment of Error I, R. 112; Ruling of Court, R. 110).

II

The Court erred in denying the permanent injunction prayed by plaintiff. (Assignment of Error II, R. 112; Ruling of Court, R. 110).

III

The Court erred in entering the following Decree:

> And Now, to-wit: this 7th day of January, A. D. 1936, the plaintiff having filed its motion for an interlocutory injunction under Section 266 of the Judicial Code as amended (28 USCA Sec. 380) and upon hearing thereon before Hon. J. Whitaker Thompson, Circuit Judge, Hon. Oliver B. Dickinson, and Hon. William H. Kirkpatrick, District Judges, specially constituted in the District Court of the United States for the Eastern District of Pennsylvania to hear and determine the case, the parties agreed upon and filed a stipulation of admitted facts, and further stipulated and agreed that the hearing on said motion should also be considered as a final hearing for a permanent injunction, it is
>
> ORDERED, ADJUDGED AND DECREED that plaintiff's motion for an interlocutory injunc-

tion be and the same is hereby dismissed; and it is further

ORDERED, ADJUDGED and DECREED that the prayers of the Bill of Complaint for a permanent injunction be denied and the Bill dismissed, Plaintiff to pay costs. (Assignment of Error III, R. 112, Final judgment and decree, R. 110).

IV

The Court erred in its first Conclusion of Law, which conclusion is as follows:

"The beer, the claimed right to import which the plaintiff asks to have enforced, cannot be imported except in violation of the laws of Pennsylvania." (Assignment of Error IV, R. 113, Conclusion of Law, R. 109).

V

The Court erred in its second Conclusion of Law, which conclusion is as follows:

"The Statutes of the State, here in question, are constitutional." (Assignment of Error V, R. 113, Conclusion of Law, R. 109).

VI

The Court erred in its third conclusion of law, which conclusion is as follows:

"The importation is unlawful under the Constitution and laws of the United States." (Assignment of Error VI, R. 113; Conclusion of Law, R. 109).

VII

The Court erred in its fourth conclusion of law, which conclusion is as follows:

> "The Bill of the Plaintiff is without equity and should be dismissed, with costs." (Assignment of Error VII, R. 113; Conclusion of Law, R. 109).

VIII

The Court erred in refusing to affirm plaintiff's eleventh Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

> "11. Since under the laws of the Commonwealth of Pennsylvania the importation of beer into the State in interstate commerce from points outside the State is lawful, the State may only restrict and limit the importation thereof in accordance with the limitations imposed by the Constitution of the United States."
>
> 11. Not found as requested. The importation of beer in sofar as in violation of the laws of Pennsylvania is likewise unlawful under the Constitution and laws of the United States." (Assignment of Error VIII, R.113; Ruling of Court, R.107).

IX

The Court erred in refusing to affirm plaintiff's twelfth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

> "12. Beer, when imported from one state into another, upon arrival in the state of destination, falls in the same legal category as like products of domestic origin; and since, under the laws of the Commonwealth of Pennsylvania, beer is a legitimate

article of commerce, the State cannot subject imported beer or the dealer thereof to any burdens and impositions which are not imposed upon domestic beer or the dealer thereof."

"12. Not found as requested." (Assignment of Error IX, R.114; Ruling of Court, R.107).

X

The Court erred in refusing to affirm plaintiff's thirteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"13. The Commonwealth of Pennsylvania, in regulating, licensing, taxing, or restricting interstate commerce in beer, cannot in the exercise of its police power discriminate against beer or the dealer thereof solely because of its origin outside the state.'"

"13. Not found because an abstraction. The Act of the Pennsylvania Assembly restricting and prohibiting the importation of beer is a lawful exercise of the public powers of the State and all importations in violation of the laws of the State are forbidden by the Constitution and laws of the United States and unlawful." (Assignment of Error X, R. 114; Ruling of Court R. 107).

XI

The Court erred in refusing to affirm plaintiff's fourteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"14. Since the manufacture and sale of beer is a lawful business, and so recognized by the laws of the Commonwealth of Pennsylvania, neither the Act of Congress known as the Webb-Kenyon Act nor

the 21st Amendment to the Constitution of the United States permits the Commonwealth of Pennsylvania to discriminate against beer of foreign manufacture merely because of its origin outside the state. Such a discrimination constitutes an undue and unconstitutional burden upon interstate commerce."

"14. Not found as requested." (Assignment of Error XI, R. 115; Ruling of Court, R. 107).

XII

The Court erred in refusing to affirm plaintiff's fifteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"15. The provisions of the Pennsylvania Beverage License Law and the regulations issued thereunder impose an unconstitutional burden upon interstate commerce in attempting to tax complainant, a distributor of beer manufactured outside the state, at a rate higher than that imposed upon a distributor of beer of domestic origin."

"15. Not found as requested." (Assignment of Error XII, R. 115; Ruling of Court, R. 107).

XIII

The Court erred in refusing to affirm plaintiff's sixteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"16. The provisions of the Pennsylvania Beverage License Law of 1935, which exact of complainant, a distributor of beer manufactured outside the state, a license fee in excess of that required of a distributor of beer manufactured within the state,

unfairly discriminate against the product of another state solely because of its origin, rest upon no rational basis, are arbitrary and capricious, and deprive complainant of its liberty and property, without due process of law, and deny to it the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States."

"16. Not found as requested." (Assignment of Error XIII, R. 115; Ruling of Court, R. 107).

XIV

The Court erred in refusing to affirm plaintiff's seventeenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"17. The provisions of the Pennsylvania Beverage License Law of 1935 that all the officers and directors of complainant shall be residents of the Commonwealth of Pennsylvania for two years before Complainant can receive a license as an importing distributor of beer, bears no substantial relationship to the State's regulation and control of the business, rests upon no rational basis, is arbitrary and unreasonable, and deprives complainant of its liberty and property, without due process of law, and denies to it the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States."

"17. Not found as requested." (Assignment of Error XIV, R. 116; Ruling of Court, R. 107).

XV

The Court erred in refusing to affirm plaintiff's eighteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"18. The provision of the Pennsylvania Beverage License Law of 1935 that the owners of a majority of complainant's stock shall be residents of the Commonwealth of Pennsylvania for two years before complainant can receive a license as an importing distributor of beer, bears no substantial relationship to the State's regulation and control of the business, rests upon no rational basis, is arbitrary and unreasonable, and deprives complainant of its liberty and property without due process of law, and denies to it the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States."

"18. Not found as requested." (Assignment of Error XV, R. 116; Ruling of Court, R. 107).

XVI

The Court erred in refusing to affirm plaintiff's nineteenth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"19. Since the complainant possesses, within the Commonwealth of Pennsylvania, tangible property and the good will, trade and custom of a going business there conducted, and since the enforcement of the unconstitutional provisions of the Pennsylvania Beverage License Law of 1935 will involve a direct invasion of these property rights, resulting in irreparable injury thereto, complainant is entitled to injunctive relief.

"(See: Truax v. Raich, 239 US 33;
M. Schnadler Bottling Co. v. Welch, 42 Fed. 561)"

"19. Not found as requested." (Assignment of Error XVI, R. 117; Ruling of Court, R. 107).

XVII

The Court erred in refusing to affirm plaintiff's twentieth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"20. An actual and immediate controversy exists between the complainant and defendants who, unless restrained, will enforce the aforesaid unconstitutional provisions of the Pennsylvania Beverage License, Law of 1935, the enforcement of which will inflict upon complainant irreparable damage and result in the ruination of its business and the destruction of its property and property rights. Since, by its own terms, the provisions of said Law are severable, and the validity of other provisions of said law is not here involved, an injunction shall issue restraining the defendants from requiring of complainant, a distributor of beer imported from without the State of Pennsylvania, a license fee in excess of that exacted of a distributor of beer manufactured within the State, and further restraining defendants from enforcing those provisions of said law which deny to the complainant an importing distributor's license because all its officers and directors and the holders of 51% of its stock are not residents of the Commonwealth of Pennsylvania."

"20. Not found as requested." (Assignment of Error XVII, R. 117; Ruling of Court, R. 107).

XVIII

The Court erred in its answer to the defendant's second Request for Conclusions of Law, which Request and the answer thereto are as follows:

"2. These acts were passed by the Commonwealth of Pennsylvania in exercise of its police power as

reinforced by the Twenty-first Amendment of the Constitution of the United States, in regulation of liquor traffic."

"2. Not found as requested because an abstraction. The Pennsylvania Acts of Assembly were the lawful exercise of the police powers of the State and all importations of intoxicating liquors in violation of the laws of the State are unlawful under the Constitution and laws of the United States." (Assignment of Error XVIII, R. 118; Ruling of Court, R. 107).

XIX

The Court erred in affirming the defendant's Fifth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"5. The distributor licensee, as indicated in Section 2, subdivision (c), is described and limited to one who engages in the purchase of malt or brewed beverages from Pennsylvania manufacturers only, or from importing distributors and to the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturers, and may not sell for consumption on the premises where sold or in quantities of less than 288 fluid ounces."

"5. Found as Requested." (Assignment of Error XIX, R. 118; Ruling of Court, R. 107).

XX

The Court erred in its answer to the defendant's seventh Request for Conclusions of Law, which Request and the Answer thereto are as follows:

"7. From these provisions, it appears that the importing distributor is granted superior rights over

and above the distributor, in that he may buy either from domestic or foreign manufacturers or domestic or foreign distributors, and may resell not only to retail dispensers but also to other distributors; whereas, distributors are restricted in their purchase from domestic manufacturers and/or importing distributors and are denied the right to purchase from foreign manufacturers or foreign or domestic distributors, or to sell to other distributors. In view of this differentiation of privileges, the difference in the license fee being $400.00 in the case of a distributor and $900.00 in the case of an importing distributor. is not only reasonable but justified."

"7. The classification of dealers as distributors and importing distributors is a lawful classification and the imposition of different license fees is likewise lawful." (Assignment of Error XX, R. 119; Ruling of Court, R. 107).

XXI

The Court erred in affirming the defendant's eighth Request for Conclusions of Law, which Request and the action of the Court thereon are as follows:

"8. A state, under its police power, as reinforced by the Twenty-First Amendment of the Constitution of the United States, may lawfully classify licensees engaging in the traffic of intoxicating liquors, fix license fees for each class, change such classifications and fees from time to time as its Legislature, in its wisdom, deems proper, and may limit the extent to which licensees in various classes may engage in such traffic, and also prescribe the conditions under which such classes of licenses may be issued."

"8. Found as requested." Assignment of Error XXI, R. 119; Ruling of Court, R. 108):

XXII

The Court erred in its answer to the defendant's Ninth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"9. The provision requiring that corporation licensees, whether domestic or foreign, to conform to the requirement that the officers and directors and majority of stockholders be residents of the Commonwealth of Pennsylvania is entirely reasonable, in view of the well known fact that the regulation of traffic in intoxicating liquors can only be adequately enforced, if at all, through the medium of criminal prosecution, and such means would be unavailing if corporations be permitted to carry on such business with non-resident officers who are beyond the reach of criminal process. This requirement simply places corporate officers upon the same level with individuals. In this, there is no discrimination since the law also requires individuals to be residents."

"9. Not found as requested because argumentative. The requirement of the Pennsylvania law that the officers and directors and a majority of the stockholders of corporation licensee, whether domestic or foreign, be residents of the State is a lawful exercise of the police powers of the State." (Assignment of Error XXII, R. 119; Ruling of Court, R. 108).

XXIII

The Court erred in its answer to the defendant's Tenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"10. Even if the provisions regulating the issuance of the importing distributors' licenses and fees

be held unconstitutional, Section 32A, which provides that "The provisions of this act shall be severable, and if any of the provisions shall be held to be unconstitutional, such decision shall not affect the validity of any of the remaining provisions of this act" and "It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein." leaves the effect of the general prohibitory clauses unimpaired. As a consequence of which and the operation of the Twenty-First Amendment, any sales by the complainant would still be unlawful. Under such circumstances, a court of equity will not issue injunctions because its action would be futile and vain."

"10. Not found as requested because argumentative. The injunction prayed for in the Bill should not be granted." (Assignment of Error XXIII, R. 120; Ruling of Court, R. 108).

XXIV

The Court erred in its answer to the defendant's Eleventh Request for Conclusions of Law, which Request and the answer thereto are as follows:

"11. The public policy of the Commonwealth of Pennsylvania with regard to dispensing of intoxicating liquors, as evidenced by Section 28, Subdivision (f) of the Beverage License Law of 1933, as amended in 1935, is against permitting the manufacturer of intoxicating liquor of any kind being interested directly or indirectly in or in any wise financing retail or wholesale licensees or dispensers, whether as creditor or as stock owner. For this purpose, Subdivision (3) of Section 28 prohibits stock ownership, inter alia, of either a distributor or an importing distributor by a manufacturer, domestic or for-

eign. The ownership of the complainant's entire capital stock by the foreign manufacturer is directly in conflict with this public policy and renders the complainant absolutely ineligible to be licensed either as an importing distributor or even as a distributor.'

"11. Not found as requested because argumentative. It is the policy of the law of Pennsylvania that distillers of whisky and brewers of malt liquors should not be interested in the sale at retail of the liquors manufactured by them. It is a valid exercise of the police powers of the State to refuse to license a manufacturer to sell at retail or to prohibit stock ownership by a manufacturer of either a distributor or an importing distributor, domestic or foreign. The plaintiff has not shown itself to be eligible to receive authority under the laws of Pennsylvania to be an importing distributor." (Assignment of Error XXIV, R. 121; Ruling of Court, R. 108).

XXV

The Court erred in its answer to the defendant's Twelfth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"12. The complainant in this case does not come into a court of equity with clean hands, in that it is operating under a distributor's license issued by the County Treasurer of Philadelphia in violation of the law as it was before the amendment of 1935. Section 12 of which law authorizes the issuance of such licenses by the county treasurer only 'to corporations organized in or duly authorized to transact business in this Commonwealth and all of whose officers and directors shall be citizens of the United States who have also been residents of this Common-

wealth for at least three years immediately preceding, the application for license.' The complainant in this case having alleged in the bill that its officers and directors were nonresidents of this Commonwealth."

"12. Not found as requested because argumentative. The plaintiff has not shown itself eligible to receive authority to be an importing distributor under the laws of Pennsylvania." (Assignment of Error, XXV, R. 121; Ruling of Court, R. 108).

XXVI

The Court erred in its answer to the defendant's Thirteenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"13. Courts will not interfere by injunction where the injury inflicted or threatened is merely the vexation of arrest and punishment of complainant, who is left free to litigate the question of unconstitutionality of the statute or ordinance or its construction or application in making his defense at trial or prosecution for its violation. The remedy at law by indictment and prosecution is presumed to be adequate. It is only where the statute or ordinance is unconstitutional or otherwise invalid, and where, in the attempt to enforce it, there is a direct invasion of property rights resulting in irreparable injury, that an injunction will issue to restrain the enforcement thereof. Both of these elements are indispensable, and the latter element is not present where, as here, it appears that the injury or loss to the complainant's business or rights of property would be only such as would incidentally flow from the arrest or prosecution thereunder."

"Long v. Metzger et al., 301 Pa. 449-454."

"13. Not found as requested because argumentative. The plaintiff has no right to the injunction prayed for." (Assignment of Error, XXVI, R. 122; Ruling of Court, R. 108).

XXVII

The Court erred in its answer to the defendant's fifteenth Request for Conclusions of Law, which Request and the answere thereto are as follows:

"15. The Twenty-First Amendment to the Federal Constitution must be regarded as divesting intoxicating liquor of any protection of the Interstate Commerce Clause. The right of a state to prohibit totally, as is in said Twenty-first Amendment guaranteed, necessarily involves the right to prohibit conditionally, and especially so where the conditions are neither discriminatory or unreasonable, as here."

"15. Not found as requested because argumentative. The Twenty-first Amendment prohibits the importation of intoxicating liquors into a State if the importation is in violation of the law of the State. The importation here in question would be in violation of the laws of Pennsylvania. It is in consequence prohibited by the Twenty-first Amendment and by the Webb-Kenyon Act." (Assignment of Error, XXVII, R. 123; Ruling of Court, R. 108).

XXVIII

The Court erred in its answer to the defendants' sixteenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"16. The provisions of Section 2 of Article IV of the Federal Constitution, providing the citizens

of each state shall be entitled to all privileges and immunities of the citizens of the several states, cannot be invoked by this complainant under the well settled rule that a corporation is not a citizen within the meaning of this provision of the Constitution."

"16. Not found as requested because argumentative. The Pennsylvania Statute is not unconstitutional by reason of anything contained in Sec. 2 of Article IV of the Constitution of the United States." (Assignment of Error, XXVIII, R. 123; Ruling of Court, R. 108.)

XXIX

The Court erred in its answer to the defendants' seventeenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

"17. Neither does the clause of the Fourteenth Amendment, forbidding a state to deny to any person within its jurisdiction the equal protection of the law, apply, because laws of the State of Pennsylvania do not deny to the complainant equal protection of its laws. The complainant is granted privileges equal with licensees of the same class, whether, individual or domestic or foreign corporation. Neither can said clause be invoked by the complainant's parent company, the Premier Pabst Corporation, because it is not a complainant in this bill, nor is it a person within the jurisdiction of the State of Pennsylvania."

"17. Not found as requested because argumentative. The Pennsylvania Statute is not unconstitutional because of anything contained in the Fourteenth Amendment of the Constitution of the United States." (Assignment of Error, XXIX, R. 123; Ruling of Court, R. 109).

XXX

The Court erred in affirming the defendants' eighteenth Request for Conclusions of Law, which Request and the answer thereto are as follows:

> "18. The right to engage in the sale of intoxicating liquors is not one of the privileges or immuities of citizens of the United States, which the states are thereby forbidden to abridge. Nor can such restrictive statutes be said to deprive persons of liberty or property without due process of law. Nor, if not entirely arbitrary in their discrimination between persons, do they deprive anyone of the equal protection of the law. Phillips v. Mobile, 208 U.S. 472."
>
> "18. Found as requested." (Assignment of Error XXX, R. 124; Ruling of Court, R. 109).

SUMMARY OF THE ARGUMENT

I

A state may not, under the guise of its police power, discriminate against products because of their foreign origin by imposing a tax either directly upon the articles themselves, or indirectly by requiring a license for their sale.

Webber v. *Virginia,* 103 US 344;
Guy v. *City of Baltimore,* 100 US 434;
Welton v. *Missouri,* 91 US 275;
Brown v. *Maryland,* 12 Wheat. 419;
Sonneborn v. *Keeling,* 262 US 506;
Woodruff v. *Parham,* 8 Wall 123;
Baldwin v. *Seelig,* 294 US 511;

A

Prior to the enactment of the federal statutes with respect to commerce in liquor, a state had no greater power over interstate commerce in intoxicating liquor than it had over any other article of commerce.

Tiernan v. *Rinker,* 102 US 123;
Walling v. *Michigan,* 116 US 446;
Leisy v. *Hardin,* 135 US 100;
License cases, 5 How. 504,
Wilkerson v. *Rahrer,* 140 US 545;
Bowman v. *C & NW RR,* 125 US 465.

B

The Wilson Act, (tit. 27, §127, USCA, Aug. 8, 1890, Appendix Pg. 95), while extending the police power of the state to intoxicating liquor in the original package in which it was introduced into the state, did not withdraw the protection of the commerce clause to the extent of permitting a state to discriminate against liquors solely because of their out-of-state origin.

Vance v. *Vandercook,* 170 US 438;
Rhodes v. *State of Iowa,* 170 US 412;
Scott v. *Donald,* 165 US 58;
Mpls. Brew Co. v. *McGillivray,* 104 Fed. 258;
State v. *Zophy,* 14 S. D. 119, 84 NW 391;
Commonwealth v. *Petranich,* 183 Mass. 217,
66 NE 807.

C

The Webb-Kenyon Act, (tit. 27, §122, USCA, March 1, 1913, Appendix Pg. 95), merely extending the principle of the Wilson Act to the time when the liquors reached the borders of the state.

Adams Express Co. v. *Kentucky,* 238 US 190;
James Clark Distil. Co. v. *Western Md. Ry. Co.* 242 US 311;
Brennan v. *So. Express Co.,* 106 S. C. 102, 90 SE 408;
Evansville Brewery v. *Excise Commission,* (D. C. Ala.), 225 Fed. 204;
Triner v. *Arundel,* (D. C. Minn.), 11 Fed. Sup. 145;
Youngs Market v. *State Board,* (S. D. Cal.), 12 Fed. sup. 140;
Pac. Fruit & Produce Co. v. *Martin,* (W. D. Wash.), (not officially reported, see appendix).

D

The XXI Amendment to the Constitution of the United States, adopting the language of the Webb-Kenyon Act, construed in the light of the decisions, grants no further power to the states in dealing with intoxicating liquors transported in interstate commerce into the state than was previously conferred by the Webb-Kenyon Act. It simply placed it beyond the power of the Congress to withdraw the power previously granted.

Youngs Market v. *State Board,* (S. D. Cal.), 12 Fed. Sup. 140.

The protection of the commerce clause does not cease with the cessation of actual commerce but extends to protect an article against unfair discrimination by a state even though it has come to rest and has been commingled with the general mass of the property of the state and thereby subject to the laws thereof.

Darnell v. *Memphis*, 208 US 113;
Baldwin v. *Seelig*, 294 US 511;
Bethlehem Motors Co. v. *Flynt*, 256 US 421,

The law of any state which unfairly discriminates against the product of another state because of its origin, either by way of taxation upon the product itself or the agent handling it, or by onerous regulations, which burden is not equally borne by products of local origin, is unconstitutional and void, even though the product has, as in the case of liquors, been divested of its immunity as an article of interstate commerce by federal statutory and constitutional provisions, or, in the case of other products, has ceased to be an article of commerce by being commingled in the general mass of property within the state.

(See cases supra).

E

The Beverage License Law which purports to classify distributors upon the basis of whether the purchase of the product which they sell is from a person within the state or from a person without the state, and which imposes a higher license fee and exacts a larger bond from the one engaged in the purchase of liquors from an out-of-state dealer or manufacturer than is required of the one engaged in the purchase

of liquors from a manufacturer or dealer within the state, directly discriminates against the liquors of a foreign state and those engaged in handling them.

(See cases supra).

II

A

Appellant, as the holder of a distributor's license issued by the State of Pennsylvania, under the provisions of the 1933 Act, engaged in business thereunder at the time of the commencement of this action and licensed to do business within the state as a foreign corporation, may properly challenge the validity of the Beverage License Law of 1935, which deprives it of rights guaranteed to it under the Constitution.

Power Mfg. Co. v. *Saunders*, 274 US 490;
Kentucky Finance Corp. v. *Paramount Auto Exc.* 262 US 544;
Quaker City Cab Co. v. *Pennsylvania*, 277 US 389.

B

Appellant may properly challenge the constitutionality of the statute for the further reason that all provisions of the Beverage License Law relating to "Distributors' Licenses" or "Importing Distributors' Licenses" are so inseparably connected with and dependent upon the invalid "Importing Distributors' License" fee provisions, that they must fall together, and, there being no valid law requiring any license whatever of appellant to carry on its business, appellant is entitled to equitable relief against the threatened enforcement of the in-

valid provisions of the statute.

Railroad Retirement Board v. *Alton Ry. Co.*, 295 US 330;
Hill v. *Wallace*, 259 US 44.

III

The provisions of the Beverage License Law, in limiting the issuance of a license to a corporation whose officers and directors have been residents of the state of Pennsylvania for a period of two years prior to the making of the application therefor, and 51% of whose stockholders have been residents of the state for a like period, are arbitrary, capricious, and without any reasonable relation to the purposes for which the police powers of the state may be lawfully exercised.

Liggett v. *Baldrige*, 278 US 105.

ARGUMENT

I

May a state, whose laws permit the purchase and sale of intoxicating liquor, place discriminatory burdens or taxes upon liquors produced outside the state or upon persons engaged in their sale under the guise of exercising its police power?

Generally, the question raised by this appeal is as above stated. Specifically, the question is whether the Act of the Legislature of Pennsylvania entitled "Beverage License Law" enacted July 18, 1935, which by its several provisions estab-

lishes a licensing system, creating among other classes of licenses a "distributors' license" and an "importing distributors' license" is a valid exercise of the police powers of such state.

By this legislation, wholesale dealers in malt and brewed beverages are divided into two classes: (1) those who purchase their products from manufacturers or dealers within the state, and (2) those who purchase their products from manufacturers or dealers outside the state.

For one to engage in the business of purchasing and selling at wholesale a product manufactured within the state of Pennsylvania, a fee of only $400 and a bond of only $1,000 is required by this Act. For one to engage in a business identical therewith except to purchase his product from a manufacturer or dealer located outside the State of Pennsylvania, a fee of $900 and a bond of $2,000 is required. (Sec. 19 (b) and (c) Appendix Pg. 82).

That this is the result and effect of the law complained of in this action was freely admitted by the defendants below and premised the opinion in the lower court. That such legislation, if directed at a subject other than intoxicating liquors, would exceed the powers of the state as restricted by the commerce clause and the Fourteenth Amendment to the Constitution is as readily and freely admitted. This Court has on so many occasions expressed the undoubted purpose of the constitutional limitation placed on the power of a state to legislate upon the subject of interstate commerce and has so frequently referred to our colonial history, which so emphasized the importance of such limitation in the framing of

the Constitution, that appellant does no more than to preface this argument by a mere suggestion of these subjects.

We proceed with this argument by first examining the contentions advanced by appellee in the trial below, that intoxicating liquors have, by the Acts of Congress and the Twenty-first Amendment, been withdrawn from all protection under the commerce clause and the Fourteenth Amendment, which they would otherwise be afforded as articles of lawful commerce between the states. Because of this asserted unlimited power of the state to so deal with intoxicating liquors, it is well to leaf back through the history of this court in its pronouncements relating to this subject and examine each in the light of the prevailing legislation to gain from it the chart to direct our path through the more recent congressional acts.

A

Before the Wilson Act

The first legislation of Congress extending the power of a state over intoxicating liquor in interstate commerce was the Wilson Act passed in 1890. Prior to the passage of this Act, the state had no power to restrict, burden, regulate, or prohibit interstate traffic in intoxicating liquor, and the immunity of the liquors transported into the state from interference by the state continued so long as the liquor remained in its original and unbroken package.

Wilkerson v. *Rahrer*, 140 US 545;
License cases, 5 How. 504;
Bowman v. *C. & N. W.*, 125 US 465;
Leisy v. *Hardin*, 135 US 100.

B

Under the Wilson Act

The Wilson Act marks the first extension of the state's power to deal with intoxicating liquor when surrounded with the immunity which would otherwise exist under the commerce clause. It was passed to avoid the effect of the "original package" doctrine, and to permit the state to prohibit or regulate the sale of intoxicating liquor after being imported into the state but before being released from its original package. This purpose was so expressed by this court in Vance v. Vandercook, 170 US 438, 446, where it is said:

> "In the first of these cases the constitutional power of Congress to pass the enactment in question was upheld, and the purpose of congress in adopting it was declared to have been to allow state laws to operate on liquor shipped into one state from another, so as to prevent the sale in the original package in violation of state laws."

That this Act did not withdraw intoxicating liquors from the protection of the Commerce Clause, while they remained in their unbroken packages, to such an extent that a state was left free to discriminate against or place burdens upon their sale that were not likewise imposed upon similar products originating within the state, was made clear in Scott v. Donald, 165 US 58, 41 L ed 632, the first case decided under that Act. The legislature of the State of South Carolina, by the passage of the State Dispensary Act, undertook this very thing, and this court left no doubt as to the purpose of this type of legislation by the Congress, declaring itself firm-

ly against any view that the state might exercise its police powers in a manner that would result in discrimination against the liquors of another state.

Because the legislation which followed the Wilson Act is but a mere extension of the same power, enacted for the same purpose, to attain more completely the same object, the views of this court, as expressed in Scott v. Donald, supra, are of the utmost importance in determining the effect of the Webb-Kenyon Act, the principles of which are now embodied in the 21st Amendment. This court in that case said:

> "That law was not intended to confer upon any state the power to discriminate injuriously against the products of other states in articles whose manufacture and use are not forbidden, and which are therefore the subjects of legitimate commerce. When that law provided that 'all fermented, distilled, or intoxicating liquors transported into any state or territory, remaining therein for use, consumption, sale, or storage therein, should, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory, and should not be exempt therefrom by reason of being introduced therein in original packages or otherwise,' evidently equality or uniformity of treatment under state laws was intended. The question whether a given state law is a lawful exercise of the police power is still open, and must remain open, to this court. Such a law may forbid entirely the manufacture and sale of intoxicating liquors and be valid. Or it may provide equal regulations for the inspec-

> tion and sale of all domestic and imported liquors and be valid. But the state cannot, under the Congressional legislation referred to, establish a system which, in effect, discriminates between interstate and domestic commerce in commodities to make and use which are admitted to be lawful. * * *
> "It is sufficient for the present cases to hold, as we do, that when a state recognizes the manufacture, sale, and use of intoxicating liquors as lawful, it cannot discriminate against the bringing of such articles in, and importing them from other states; that such legislation is void as a hindrance to interstate commerce and an unjust preference of the products of the enacting state as against similar products of the other states."

The conclusion of this Court so announced in the *Scott* v. *Donald* (supra) case was reaffirmed and reiterated in the subsequent case of *Vance* v. *Vandercook* (supra) in which it was said:

> "The conclusion expressed on that branch of the case was this and nothing more, that although the Act of Congress authorizes a State law to attach to an original package so as to prevent its sale, it did not contemplate and sanction the operation of a state law which injuriously discriminated against the products of other states, and which in consequence of such discrimination was not a police law in the correct sense of those words."

Under the principle of these decisions, legislation of several states, purportedly passed in the exercise of the state's police power over the field of state action, as enlarged by the Wilson Act, were held void as in conflict with the commerce

clause, where their provisions operated to discriminate against the liquors of another state.

Minneapolis Brewing Co. v. *McGillivray,*
(CC,SD 1900), 104 Fed. 258;
State v. *Zophy,* 14 S. D. 119, 84 NW 391;
Commonwealth v. *Petranich,*
183 Mass. 217, 66 NE 807.

C

Under the Webb-Kenyon Act

The Webb-Kenyon Act merely moved the sphere of the state's power over interstate commerce in liquor from the point where, under the Wilson Act, the commerce had ceased but the liquors remained in their original package to the borders of the state, and permitted the state to exercise its police powers over liquors sought to be introduced in that state in violation of its valid laws. That it did not grant to the state any power to legislate in a manner which would result in a discrimination against the products of another state is clear from the scope of the Act and the previously declared views of this court upon legislation of the same type enacted pursuant to the same purpose.

In *James Clark Distilling Co.* v. *Western Maryland Railway Co.,* 242 US 311, 330, this Court recognized that Congress in enacting the Webb-Kenyon Act was exerting a power essentially identical to the power exerted in the passage of the Wilson Act. In this connection it was said:

> "As the power to regulate which was manifested in the Wilson Act, and that which was exerted in

> enacting the Webb-Kenyon Law, are essentially identical, the one being but a larger degree of exertion of the identical power which was brought into play in the other, * * *"

It did not purport to set at naught the guarantees of the commerce clause forbidding a state to wall itself apart from the commerce of another state and at the same time permit the liquors produced within its borders to be the subject of commerce.

In *Brennen* v. *Southern Express Company*, 106 S. C. 102, 90 SE 402, it was said:

> "The Act of Congress of March 1, 1913, known as the Webb-Kenyon Act, does not affect the decision of the question; for, while that Act does divest intoxicating liquors shipped into a state in violation of its laws of their interstate character and withdraws from them the protection of Interstate Commerce, it evidently contemplated the violation of only valid state laws. It was not intended to confer and did not confer upon any state the power to make injurious discriminations against the products of other states which are recognized as subjects of lawful commerce by the law of the state making such discriminations, nor the power to make unjust discriminations between its own citizens.
>
> "Substantially the same thing was said in Scott v Donald, supra, of the Wilson Act, by which Congress made liquors shipped into a state subject to its law after delivery thereof to the consignee. The principle there decided was reaffirmed in Vance v Vandercook, 170 US 438.
>
> "It follows that the Circuit Court erred in refusing the relief prayed for."

That the Webb-Kenyon Act did not remove intoxicating liquor from all protection of the commerce clause is held by this court in *Adams Express Co.* v. *Kentucky*, 238 US 190, 199, where it is said:

> "Except as affected by the Wilson act, which permits the state laws to operate upon liquors after termination of the transportation to the consignee, and the Webb-Kenyon act, which prohibits the transportation of liquors into the state, to be dealt with therein in violation of local law, the subject-matter of such interstate shipment is left untouched and remains within the sole jurisdiction of Congress under the Federal Constitution."

The evident purpose of the Webb-Kenyon Act was to extend the field over which the police powers of a state might be exercised in order that its policy of prohibition or regulation upon the subject of intoxicating liquors might not be entirely thwarted by a resort to the immunity of interstate commerce channels. There is nothing in this purpose which would countenance the thought that a state could so exercise this power as to deny commerce in the article between that state and another, and at the same time freely permit trade and commerce in the article within the state. No more could a state assert the power to do this than it could assert the power under this Act to stop at its borders liquor sought to be transported through its jurisdiction and destined to a state beyond. Yet, under the reasoning of the lower court in this case, it could only be concluded that that court felt such power to be fully possessed by the state.

Here is where appellant asserts that the lower court misconceived the purpose and effect of this statute. The premise

of the lower court's opinion in this case is its conclusion. To accept the premise is but to state the conclusion. The opinion says:

> "If the importation of intoxicating liquor is acceptable to a state, it retains its status as the legitimate subject of interstate commerce, but if it is forbidden importation by the state laws, the United States likewise forbid it. Interstate commerce is spoken of under the figure of a stream whose free flow cannot be interrupted by any state law. Any state may, however, remove intoxicating liquor as a subject of interstate commerce. When it does so by passing a law on the subject of its importation, the law of the United States forbids its further importation if in violation of the laws of the state. Such is now the law and that the law was once otherwise goes for naught. * * *
>
> "The question, however, is not one of his right to enter, but to give entrance to the intoxicating liquor. Such entrance is forbidden by the state law and when so forbidden, is, as we have said, barred also by the Twenty-First Amendment. * *.*
>
> "Moreover, without the Twenty-First Amendment the Pennsylvania Act would not have infringed any constitutional provision with the Webb-Kenyon Act in force All the commerce clause does it to commit the control of imports to Congress. What Congress permits is not unconstitutional. Some of the provisions of the Pennsylvania Act do undoubtedly discriminate in favor of the citizens of the state."

Such reasoning would, of necessity, hold valid a state law freely permitting the sale of liquors manufactured within the state, but prohibiting absolutely the introduction into the state of any liquor manufactured in another state. To say that

such was the measure of power granted a state by Congress, under the Webb-Kenyon Act, is to completely ignore the purpose of the Act and give no effect to the decisions of this Court which now provide their setting.

Certain it is that the Webb-Kenyon Act prohibits the introduction into a state of intoxicating liquors in violation of the laws of the state, but equally certain it is that a statute of a state is not to be accepted as the law of the state, if, in its passage, the legislature exceeded the limitations upon its power as expressed in the United States Constitution.

The question here is: Did the state of Pennsylvania have the power to enact a measure which the opinion of the lower court concedes discriminated against the products of another state and the persons dealing in them? The answer to this question, appellant asserts, is found in the decisions of this court in *Scott* v. *Donald* (supra) and *Vance* v. *Vandercook* (supra).

To impute to the legislature an intent, in the passage of the Webb-Kenyon Act, to permit a condition to exist in the interstate commerce of liquor whereby one state might prohibit the introduction into its borders of the liquors of another, and that other to pass legislation in retaliation thereof, would be to assume that which is not to be inferred from either the object sought or the language used. Neither is it to be assumed that Congress intended to permit a condition of chaos in the commerce of liquors between states that the framers of our Constitution by the commerce clause so carefully avoided.

Appellant asserts that the situation in respect to the power of a state over liquors actually within the channels of interstate commerce is much akin, if not identical, to the power of a state over other articles introduced into the state in interstate commerce, after such commerce has ceased and the articles have become commingled with the general mass of the property of the state. Over such property the state may exercise its powers, provided it does not single such article out, because of its origin, and direct discriminatory burdens against it. Intoxicating liquor is, while in the channels of interstate commerce, subject to the police powers of the state, but an Act which is directed against it, solely because of its out-of-state origin, is not an Act passed within the scope of a proper exercise of its police powers.

If, as appellant thus conceives the purpose and scope of the Webb-Kenyon Act, intoxicating liquors, while actually in the channels of interstate commerce, are subject to the police powers of the state only to the same extent that other articles introduced into the state in interstate commerce are subject to such powers after such commerce has entirely ceased, then the cases of this Court, decided before any of the Acts of Congress upon this subject, are as controlling and decisive today upon a situation where the liquors are not within the channels of commerce when the state attempts to exercise its power over them as they were the day of their decision.

Thus, in *Ticrnan* v. *Rinker,* 102 US 123, this Court had before it the question of the validity of an Act of the State of Texas which exacted a license tax of one engaged in the sale of intoxicating liquors manufactured in another state while exempting one engaged in the sale of liquors manufac-

tured in the state. The liquors were not in the channels of commerce and no rights were asserted upon such basis. There was no question but that the state, in the exercise of its police power, might have prohibited their sale absolutely, but the Court held that it could not permit the sale of liquors manufactured within the state and prohibit the sale of liquors manufactured outside the state; it could not permit the sale of liquor manufactured within the state without a license and exact a license as a condition to the sale of liquor manufactured outside the state.

The Webb-Kenyon Act dealing only with liquor in the channels of interstate commerce, it is inconceivable that a state now possesses greater power in respect to its legislation over liquor in which actual commerce has ceased than was possessed over like liquors prior to the Webb-Kenyon Act. Thus, appellant asserts that the language of this Court in *Tiernan* v. *Rinker* is directly applicable in its expression of the limitation upon the power of a state to discriminate and condems legislation of the type passed by the State of Pennsylvania now before the Court in this case. It is there said:

> "The petitioners rely upon the ruling of this court in the case of Welton v Missouri (91 US 275, XXIII, 347) to sustain their position. There the State had exacted the payment of a license tax from traveling peddlers who dealt in the sale of goods, wares, and merchandise which were not the growth, product or manufacture of the State, and required no such license tax from similar traders selling goods which were the growth, product or manufacture of the State. And this court held, following in that respect the ruling in Brown v Maryland, 12 Wheat., 419, that the tax exacted from dealers in

goods before they could be sold was, in effect, a tax upon the goods themselves, and that the legislation which thus discriminated against the products of other States in the conditions upon which they could be sold by a certain class of dealers, was in conflict with the commercial clause of the Constitution. * * *

"If the State can exact a license tax from one class of traders for the sale of goods which are the growth, product or manufacture of other States, it can exact the license from all traders in such goods, and the amount of the tax will rest in its discretion. 'Imposts,' the Court said 'operating as an absolute exclusion of the goods, would be possible, and all the evils of discriminating state legislation favorable to the interests of one State and injurious to the interests of other States and countries, which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the States.' The court, therefore, held that the commercial power of the Federal Government over a commodity continued until the commodity had ceased to be the subject of discriminating legislation in any State by reason of its foreign character, and that this power protects it after it has entered the State, from any burdens imposed by reason of its foreign origin. * * * The doctrine of this case has never been questioned; it has been uniformly recognized and approved, and expresses now the settled judgment of the court. According to it, the Statute of Texas is inoperative, so far as it makes a discrimination against wines and beer imported from other States, when sold separately from other liquors. A tax cannot be exacted for the sale of beer and wines when a foreign manufacture, if not exacted from their sale when of home manufacture."

To the same effect is the case of *Walling* v. *Michigan*, 116 US 446, (451, 454), where it is said:

> "The single question therefore is, whether the statute of 1875 is repugnant to the Constitution of the United States. Taken by itself and without having reference to the Act of 1881, it is very difficult to find a plausible reason for holding that it is not repugnant to the Constitution. It certainly does impose a tax or duty on persons who, not having their principal place of business within the State, engage in the business of selling, or of soliciting the sale of, certain described liquors, to be shipped into the State. If this is not a discriminating tax levied against persons for selling goods brought into the State from other States or countries, it is difficult to conceive of a tax that would be descriminating. It is clearly within the decision of Welton v. Missouri, 91 US 275 (Bk. 23, L. ed. 347), where we held a law of the State of Missouri to be void which laid a peddler's license tax upon persons going from place to place to sell patent and other medicines, goods, wares or merchandise, not the growth, product or manufacture of that State, and which did not lay a like tax upon the sale of similar articles, the growth, product or manufacture of Missouri. The same principle is announced in Hinson v. Lott, 8 Wall. 148; Ward v. Maryland, 12 Wall. 418; Guy v. Baltimore, 100 US 438; County of Mobile v. Kimball, 102 US 691, 697; Webber v. Va., 103 US 344. A discriminating tax imposed by a State operating to the disadvantage of the products of other States when introduced into the first mentioned State is, in effect, a regulation in restraint of commerce among the States, and as such is a usurpation of the power conferred by

the Constitution upon the Congress of the United States. * * *

"Many state decisions might also be cited in which the same doctrine is announced. Thus, in the case of Higgins v. 300 Casks of Lime, 130 Mass. 1, it is said: 'The result of all these decisions is, that the several States have no authority to prescribe different regulations in relation to the commerce in certain articles, dependent upon the State from which they are brought. This rule in no manner controls or limits the power of a State to enact appropriate health or inspection laws, for such laws are necessarily uniform, and are not dependent upon place.' In State v. Furbush, 72 Maine, 495, construing a statute of Maine, the supreme court of that State says: 'The Act is unconstitutional. It allows goods manufactured in this State to be peddled free; and exacts a license fee from those who peddle similar goods which are manufactured out of the State Such a descrimination in favor of goods manufactured in this State, and against goods manufactured in other States, violates the Federal Constitution.' In State v. North, 27 Mo. 464, where an Act of Missouri imposed a tax upon merchants for all goods purchased by them, except such as might be the growth, product or manufacture of that State, and manufactured articles the growth or product of other States, it was held by the Supreme Court of that State that the law was unconstitutional and void. The court says: 'From the foregoing Statement of the law and facts of this case it will be seen that it presents the question of the power of the States, in the exercise of the right of taxation, to discriminate between products of this State and those manufactured in our sister States.' And after an examination of the causes which led to the adoption of the Federal Constitution, one of the principal of

which was the necessity for the regulation of commerce and the laying of imposts and duties by a single government, the court says: 'But, whatever may be the motive for the tax, whether revenue, restriction, retaliation or protection of domestic manufacturers, it is equally a regulation of commerce, and in effect an exercise of the power of laying duties on imports; and its exercise by the States is entirely at war with the spirit of the Constitution, and would render vain and nugatory the power granted to Congress in relation to these subjects. Can any power more destructive to the union and harmony of the States be exercised than that of imposing discriminating taxes or duties on imports from other States? Whatever may be the motive for such taxes, they cannot fail to beget irritation and to lead to retaliation; and it is not difficult to foresee that an indulgence in such a course of legislation must inflame and produce a state of feeling that would seek its gratification in any measure regardless of the consequences.' See also Norris v. Boston, 4 Met. 282 (and other cases.)"

True, it is that a citation of cases decided before the Wilson Act must be with discriminate care and with an understanding of their present limitations, but let not appellees attempt to dismiss *Tiernan* v. *Rinker* and *Walling* v. *Michigan* with the mere observation that they were decided before the Wilson Act and the Webb-Kenyon Act and are thus not applicable.

This rule that an article, having its origin outside the state into whose general mass of property it has become commingled, may not be singled out by such state and made the subject of its police power because of its origin, is given expres-

sion in *Darnell* v. *Memphis,* 208 US 113, followed by *Bethlehem Motor Corp.* v. *Flynt,* 256 US 421, and quite recently found in full growth in *Baldwin* v. *Seelig,* 294 US 511.

In *Darnell* v. *Memphis,* supra this court at page 119 said:

> "As a prelude to a review of the cases referred to, we observe that while it is undoubted that it has been settled that where property which has moved in the channels of interstate commerce is at rest within a state and has become commingled with the mass of property therein, it may be taxed by such state without thereby imposing a direct burden upon interstate commerce, that doctrine, as expounded in the decided cases, including those relied upon by the court below, has always expressly excluded the conception that a state could, without directly burdening interstate commerce, discriminate against such property by imposing upon it a burden of taxation greater than that levied upon domestic property, of a like nature. * * *
>
> "As there can be no doubt within the principles so clearly settled by the decided cases, to which we have referred, that the disputed tax, which the court below sustained, was a direct burden upon interstate commerce, since the law of Tennessee in terms discriminated against property the product of the soil of other states brought into the state of Tennessee, by exempting like property when produced from the soil of Tennessee, it follows that the court below erred in deciding the tax to be valid, without reference to the reasoning indulged in by it concerning the application of the equal protection clause of the 14th Amendment. The judgment below must therefore be reversed and the cause remanded for further proceedings not inconsistent with this opinion."

In *Bethlehem Motor Corp.* v. *Flynt,* 256 US 421 (6), in citing and following the principle announced in *Darnell* v. *Memphis,* supra, it was said:

> "The basis of the denial and its support by the supreme court is that the automobiles had passed out of interstate commerce and had reached repose in the state, and blend with the other things of the state, and became subject to intrastate regulation. It is doubtful if that be a justifiable deduction from the findings of the trial court. But comment is not necessary. It is the finding of the court that the automobiles were in the hands of the agents of the consigning corporations, and, therefore, a tax against them was practically a tax on their importation into the state. It is not necessary to say it would be useless to send them to the state if their sale could be prevented by a prohibitive tax, or one so discriminating that it would prevent competition with the products of the state. This is the ruling of the cases which we have cited. It is especially the ruling in I. M. Darnell & Son v. Memphis, supra. The imposition of such a tax is practically the usurpation of the power of Congress over interstate commerce, and therefore illegal."

No clearer expression of the limitation of the powers of a state can be found in any of the decisions of this court than that of the case of *Baldwin* v. *Seelig,* supra, where it is said at page 527:

> "What is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic isolation. Formulas and catchwords are subordinate to this overmastering requirement. Neither the power to tax nor the

> police power may be used by the state of destination with the aim and effect of establishing an economic barrier against competition with the products of another state or the labor of its residents. Restrictions so contrived are an unreasonable clog upon the mobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin. They are thus hostile in conception as well as burdensome in result. The form of the packages in such circumstances is immaterial, whether they are original or broken. The importer must be free from imposts framed for the very purpose of suppressing competition from without and leading inescapably to the suppression so intended."

And of greater importance is the expression of this Court upon this very subject of intoxicating liquors when it is said, at page 528:

> "In licensing or prohibiting the sale of intoxicating liquors a state does not attempt to neutralize economic advantages belonging to the place of origin. What it does is no more than to apply its domestic policy, rooted in its conceptions of morality and order, to property which for such a purpose may fairly be deemed to have passed out of commerce and to be commingled in an absorbing mass."

The position of appellant should not be misunderstood in respect to its contention that the commerce clause remains a source of protection to the commerce in intoxicating liquors. It should not be said that appellant ignores these Congressional Acts and treats the commerce in intoxicating liquor the same as commerce in other articles of trade in respect to the

powers of a state over it. To these Acts appellant gives full recognition and application in the light of their purpose as expressed in the opinions of this Court, and asserts that as they have been and are to be construed they may not be relied upon by a state as an aid to the enactment of discriminatory legislation.

D

Under the 21st Amendment

It remains only to consider whether the adoption of the 21st Amendment added to the powers of a state or removed a limitation upon the exercise of existing powers so that one state might enact legislation discriminating against liquors produced in another. If the 21st Amendment accomplished this result, it is because language when used in a constitutional amendment means something different than the same language when used in an Act of Congress. A comparison of the provisions of the 21st Amendment and of the Webb-Kenyon Act will reveal that their context is practically identical. Extraneous words omitted, the Webb-Kenyon Act reads:

> "The shipment or transportation * * * of * * * intoxicating liquor * * * from one state * * * into any other state * * * which intoxicating liquor is intended by any person interested therein to be received, possessed, sold, or in any manner used either in the original package or otherwise, in violation of any law of such state, is hereby prohibited"

While the 21st Amendment reads:

> "The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof is hereby prohibited."

There was no occasion for incorporating the Webb-Kenyon Act into the Constitution in order to make its provisons fully effective and valid. This court had previously passed upon the constitutionality of that act and determined that Congress had acted within the sphere of its delegated powers in its passage. No new power was required to be surrendered by the state to the Federal Government in order to make its provisions fully effective.

The purpose of incorporating such provision in the Constitution was, therefore, not to add to the powers of the Federal Government. It was the outgrowth purely of a pledge made in the campaign for the repeal of the 18th Amendment that states might have guaranteed to them the right to pursue a policy of complete prohibition or regulation which could not be defeated by the repeal of these congressional acts. It simply placed that subject beyond the reach of Congress, adding nothing to the powers of a state and withdrawing no limitations previously imposed upon the exercise of such powers.

The 21st Amendment, having an identity of language with the Webb-Kenyon Act, and being incorporated into the Constitution to make permanent that legislation, should receive the same construction and be given the same effect that the previously cited decisions of this court, the lower courts, and the state courts, have given to the Webb-Kenyon Act.

No purpose is served by construing this amendment as giving to the state the power to place itself at war with a sister state in the commerce and trade of intoxicating liquors. Granting such powers, the results of its exercise are not difficult to foresee. Already acting upon the assumption of such power, states have enacted legislation in retaliation of the discriminatory laws of other states. A state's policy of prohibition or regulation can in no manner be aided by the extension or recognition of such power. It was neither the purpose nor the effect of this amendment to so extend it.

If the state of Pennsylvania can exact of a dealer in the liquors of another state a license fee of $900 while requiring a fee of only $400 of a dealer in the liquors of that state, it can, under the same power, entirely exempt the dealer in Pennsylvania liquor from any tax and exact a fee of a dealer in liquors of another state so high that virtual prohibition in commerce in such liquors is the result. If it may do this indirectly by license tax, it may, under the same power, do it directly by a law prohibiting absolutely the introduction into the state of liquors manufactured outside the state, while freely permitting the sale and trade in liquors manufactured in the state. Thus this court has before it not merely the narrow question of whether a state may require a larger license fee of a dealer in liquors manufactured outside the state than is required of a dealer of liquors manufactured within the state but the broader question of the power of a state to preserve to its domestic manufacturers an extensive market within its borders by denying the foreign manufacturers all access to such market.

The power is the same whether exercised in the form of onerous burdens imposed to discourage and restrict the

commerce of another state, or in the form of an absolute prohibition against it. To grant the existence of any such power is but to invite war between the states to be fought with a barrage of retaliatory laws and reprisals directed at a vast trade and commerce. The safeguards against the disturbance of domestic tranquillity would then be destroyed, all without purpose, and clearly beyond the intent and spirit of the acts and the constitutional measure which it is contended accomplish such destruction.

II

Appellant, having rights affected by the Act, may properly be heard on the question of the constitutionality of the statute.

The standing of appellant to assert the unconsitutionality of the challenged statute ought not to be the subject of question before this Court. Appellant was the holder of a distributor's license issued by the State of Pennsylvania under the provisions of the previous license law of 1933 at the time this action was commenced; it was then engaged in the business authorized to be conducted by the license; it had expended large sums of money in the development of an extensive trade within the state, and was the owner of substantial property situated therein. By this Act, appellant's right to continue in that business is entirely destroyed. Although the Act purported to preserve the right of appellant, as the holder of a distributor's license issued under the previous Act, it limits and reduces such rights to the purchase of malt and brewed beverages from manufacturers or licensees within the state.

As shown by the Stipulated Facts and the undenied allegations of plaintiff's Bill, plaintiff's business consists of the purchase of malt and brewed beverages from Premier-Pabst Corporation, which is engaged in the manufacture of malt beverages in the States of Illinois and Wisconsin, and in the sale of such liquors so purchased to customers within the State of Pennsylvania. Under the Act, appellant, as the holder of a distributor's license, may not continue in such business.

Defendants in their answer assert that appellant could not qualify for a license under the provisions of the Beverage License Law of 1935, because of the non-residence of its officers, directors, and stockholders, and that inasmuch as the officers, directors, and stockholders of appellant corporation are non-residents of the State of Pennsylvania, the license held by it was issued in violation of the provisions of the Act of 1933. There is no question concerning the validity of the license held by plaintiff in this case. There is no provision in the Act by which the rights of a licensee are terminated by a change in the residence of its officers, directors, or stockholders. The restrictions in reference to residence refer only to the time of the making of application for such license. There is no allegation in the answer of the defendants which raises any issue concerning the qualification of the appellant for a license at the time when the license was issued. Further than this, the State has stipulated that the appellant is the holder for the year 1935 of a malt liquor distributor's license, "which license authorized complainant to engage in the business, inter alia, of importing malt and brewed beverages manufactured outside the State of Pennsylvania and distributing such beverages with in the state." (See Stipulation Record 88, Par. 9).

Not only is there no allegation or proof which would support a finding that the appellant was not qualified to receive the license when issued, but the presumption is that the issuing officers of the State performed their duty and issued a license only upon a finding that the appellant was duly qualified to receive it. See

Nofire vs. *United States,* 164 US 657;
United States vs. *Chem. Foundation,* 272 US 1, 14;
United States vs. *Royer,* 268 US 394.

All that appears from the Bill or the Stipulated Facts is the residence of the officers, directors, and stockholders of appellant corporation at the time of the filing of the Bill. The presumptions favoring the validity of the license cast upon appellees the burden of pleading and proving facts which would render the license invalid. No such burden was met by a pleading that some months after the issuance of a license the plaintiff was then not qualified to receive it, and by a stipulation in which the only reference to the residence of the officers, directors, and stockholders of appellant corporation related to the time of the commencement of this action.

There is in this case, however, a broader and equally clear theory upon which appellant may properly be heard on the question of the constitutionality of this statute. If this Act is the only thing which prevents the appellant from continuing its business within the State of Pennsylvania, then if in the passage of the Act the State exceeded its powers, the appellant is certainly within the class of persons who may be heard upon this question.

Whether it had a license or not at the time this action was commenced would be wholly immaterial if the only provisions

of the Act relating to the issuance of a license were invalid. If the State had no power to exact a license upon the conditions imposed by this Act, it would be wholly immaterial whether the appellant possessed the qualifications which it would be required to have in the event the Act were valid. The appellant is not seeking a license, it is declaring that the provision for license is entirely void.

Irrespective of whether a state might limit the issuance of a license to one possessed of the qualifications enumerated in this statute, if the provisions of the statute which require the license are void because the State exceeded its power by discriminating against the products of another state, then it is no answer for the State to say, in this action brought by appellant engaged in the sale of the products discriminated against, that appellant does not possess the qualifications which the State might have required in connection with a valid license law. Can it be said that because appellant lacks a qualification exacted by an invalid law, it cannot complain of that law which purports to take away its right to engage in business?

If the licensing provisions of the Act insofar as they purport to classify distributors and require licenses for the privilege of engaging in the business of a distributor are invalid, and upon the same being so declared by this Court, the appellant could continue its business without further license or grant from the State, appellant's right to be heard upon the questions argued herein should be clear.

An examination of the provisions of this statute makes it manifest that all provisions of the Act relating to "distrib-

utor's" and "importing Distributor's" licenses are invalid if appellant's position in respect to the invalidity of the license fee exacted upon importing distributors is sustained.

The Court cannot rewrite a statute to incorporate what it might be assumed the legislature would have included had the invalid portion been omitted. Neither can it assume that with the invalid part omitted, the Legislature would have passed the Act, if remaining parts produce results obviously contrary to the object sought to be achieved by the legislative measure. This rule has been stated in the recent case of *Railroad Retirement Board* v. *Alton Railway Company*, 295 US 330, (361), where it was said:

> "The statute contains a section broadly declaring the intent that invalid provisions shall not operate to destroy the law as a whole. Such a declaration provides a rule which may aid in determining the legislative intent, but is not an inexorable command. Dorchy v. Kansas, 264 US 286, 68 L. ed. 686, 44 S. Ct. 323. It has the effect of reversing the presumption which would otherwise be indulged, of an intent that unless the act operates as an entirety it shall be wholly ineffective. Williams v. Standard Oil Co., 278 US 235, 242, 73 L. ed. 287, 309, 49 S. Ct. 115, 60 ALR 596; Utah Power & Light Co. v. Pfost, 286 US 165, 184, 76 L. ed. 1038, 1048, 52 S. ct. 548. But notwithstanding the presumption in favor of divisibility which arises from the legislative declaration, we cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole. Compare Hill v. Wallace, 259 US 44, 70, 66 L. ed. 822, 830, 42 S. Ct. 453. In this view we are confirmed by the petitioners' argument that as to some of the features

> we hold unenforceable, it is 'unthinkable' and 'impossible' that the Congress would have created the compulsory pension system without them. They so affect the dominant aim of the whole statute as to carry it down with them."

And, again, in *Hill* v. *Wallace*, 259 US 44, 70, it is said:

> "Section 11 (saving clause) did not intend the Court to dissect an unconstitutional measure and reframe a valid one out of it, by inserting limitations it does not contain."

Thus, in this case the provision fixing the fee to be paid for an "importing distributor's license" is as inseparably a part of the provisions of the Act requiring a license as the whole license system set up by the Act is inseparable from the Act itself. If the provision for the fee falls, the provision for the license itself must necessarily fall, for no one will contend, much less the State, that a person might secure the privilege purported to be conferred by an importing distributor's license without the payment of the fee, and yet be required to pay a fee to obtain the privilege purported to be conferred by a distributor's license. Therefore, if the provisions for an importing distributor's license fall, the provisions for a distributor's license are carried with it.

Thus, a holding that the license fee required for an importing distributor's license is invalid and nonenforcible removes from the Act the provisions for an importing distributor's license and for a distributor's license as well, both of which depend for their support upon the validity of the fee provisions.

This result leads to simply this: if appellant's position, that the state exceeded its powers in requiring a higher license fee of an importing wholesaler than of a wholesaler purchasing within the State, be sound, then no license whatever is required under the laws of Pennsylvania for appellant to engage in the business which it is conducting in the manner set forth in the Bill of Complaint and in the Stipulation of Facts, and such business being entirely lawful without any license, the threatened interference therewith, under the purported authority of said Act, entitles the appellant to the equitable relief prayed in its Bill.

III

The provisions of the Pennsylvania Act adopting arbitrary qualifications for licenses deny to appellant the guarantees of the XIV Amendment.

Appellant, as a separate attack upon the validity of the Pennsylvania "Beverage License Law" asserts that the provisions of the Act limiting the issuance of a license thereunder to a corporation whose officers, directors, and fifty-one per cent of whose stockholders are and have been for a period of two years prior to the making of such application residents of the State of Pennsylvania, are arbitrary, and without any reasonable relation to the purposes for which the police powers of the State may be properly exercised. The determination of the question already discussed has a bearing upon this branch of the argument only to the extent that a decision upon those questions in harmony with appellant's views will render unnecessary a consideration of this secondary question.

It may be here observed that the license fee which is required to be paid by an importing distributor is not the measure of the jurisdictional amount in controversy in this case. By no mere payment of a license fee may the appellant be privileged to continue its business of purchasing and importing beer manufactured outside the state. This Act purports to exclude appellant from the class of persons qualified to receive an importing distributor's license.

Section 5-b of the Act provides as follows:

> "Such license shall be issued to corporations duly organized or registered under the laws of the Commonwealth of Pennsylvania only when it appears that all the officers and directors of the corporation are citizens of the United States and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of the application, and that at least 51% of the capital stock of said corporation is actually owned by citizens who are residents of the United States and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of such application."

Thus, though, under the stipulated facts, appellant is possessed of all the privileges of a "distributor", yet, under the provisions of 32 (b) and Regulation 51, such privileges do not include the purchase and importation of beer manufactured outside the state.

Appellant, being presently unable to qualify for an "importing distributor's" license, asserts the invalidity of such provision on the ground that the requirement bears no reason-

able relation to the exercise of the police powers of the state in the curbing of any evils that might justify resort to such power, and that in this respect it constitutes an arbitrary invasion of appellant's property rights guaranteed by the Constitution.

It must be borne in mind that the type of license for which such qualifications are prescribed is one authorizing only the dealing at wholesale in malt and brewed liquors. It does not involve the licensing of a business in which the evils arising from retail sales and trade may exist. It is granted that if any reasonable relation might be found to exist between the condition imposed and the morals of the state, for the preservation of which the police power may be exercised, the Court will not find it invalid because of its questioned wisdom or because some other measure might have been adopted more reasonably calculated to secure the desired result. If, however, the condition is wholly arbitrary, having no conceivable relation to the public health and morals, then it does violate the constitutional right of appellant.

The equal protection clause extends to foreign corporations within the jurisdiction of the state and safeguards the protection of the law equally to all in the same situation. The appellant is entitled to the same protection of equal laws in the conduct of its business in the State of Pennsylvania as a natural person within its jurisdiction has a right to demand under like circumstances.

Kentucky Finance Corp. v. *Paramount Auto Exch.*, 262 US 544;
Quaker City Cab Co. v. *Pennsylvania*, 277 US 389;
Adair v. *United States*, 208 US 161;
Mugler v. *Kansas*, 123 US 623.

Examining the provisions of the Pennsylvania Act for the purpose of determining whether the qualification required of the stockholders of a corporation, as prerequisite to the corporation obtaining a license, is a valid exercise of the police power, or a denial of the appellant's rights under the guise of a police regulation, we find:

1. That the state is assured compliance with the law (a) by the licensee's posting of a bond (§18); (b) by the execution of a warrant of attorney authorizing the confession of judgment on behalf of such licensee in an action brought upon such bond. (§18)

2. The statute provides by numerous restrictions and limitations for the conduct of the business of the licensee, and makes penal the violation of such provisions by any officer, director, servant, agent, or employee of the corporation holding the license, making no reference however to stockholders, and imposing no duties or penalties upon any stockholder of such corporation.

The following provisions of § 23 of the Act show the strict regulation to which a corporation holding a distributor's or importing distributor's license is subject. The following acts are expressly prohibited:

(a) To sell beer between the hours of 12:00 o'clock midnight of any Saturday and 2:00 A. M. of the following Monday.

(c) To sell or give beer to any intoxicated person, a minor, or a habitual drunkard.

(e) To sell, purchase, or receive malt beverages, except for cash, except as provided for credit upon

the return of containers, and for the usual commercial credit.

(f) To sell beverages on a pass book.

(g, h, i, and k) To sell, advertise, or label malt or brewed beverages in violation of the rigorous restrictions.

(m) To engage in any other business upon the licensed premises.

(n) To store other than malt beverages upon the premises.

(p) To advertise with respect to alcoholic strength.

(q) To give money, or anything of value, to employees of prospective purchaser to induce sales.

(r) To give any prize to induce sales.

(s) To make any rebates to induce purchases.

(t) The failure to keep full and complete records concerning the operations of the licensee and all its activities, and grant access thereto by the Board.

(z) To transport or import in violation of any regulation of the Board.

By these provisions of the Act, every act which might be deemed offensive to the morals of the state is restricted or prohibited, and without a violation of the law the business of the licensee could not be conducted in a manner violative of the policy of the state as declared in the statute. What possible relation can be conceived to exist between the curbing of evils arising from the use of intoxicants and the requirements as to residence of the stockholders of a corporation upon whom no duty is placed under the Act, who have no active charge or control of the business, and whose identity it may be assumed as a matter of public knowledge is in a state of constant flux.

Legislation of this type is not novel with this Court. A statute enacted by the same state purporting to prohibit the ownership of any pharmacy or drug store by a corporation whose stockholders were not all registered pharmacists was held invalid as an arbitrary interference with the private business of a corporation operating a chain of drug stores. It was said in *Liggett Co.* v. *Baldrige*, 278 US 105, 112-14:

> "It, therefore, will be seen that without violating laws, the validity of which is conceded, the owner of a drug store, whether a registered pharmacist or not, cannot purchase or dispense impure or inferior medicines; he cannot, unless he be a licensed physician, prescribe for the sick; he cannot, unless he be a registered pharmacist, have charge of a drug store or compound a prescription. Thus, it would seem, every point at which the public health is likely to be injuriously affected by the act of the owner in buying, compounding, or selling drugs and medicines is amply safeguarded.
>
> "The act under review does not deal with any of the things covered by the prior statutes above enumerated. It deals in terms only with ownership. It plainly forbids the exercise of an ordinary property right and, on its face, denies what the Constitution guarantees. A state cannot, 'under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them. (Citing cases)
>
> "In the light of the various requirements of the Pennsylvania statutes, it is made clear, it it were otherwise doubtful, that mere stock ownership in a corporation, owning and operating a drug store, can have no real or substantial relation to the public health; and that the act in question creates an un-

reasonable and unnecessary restriction upon private business. No facts are presented by the record, and, so far as appears, none were presented to the legislature which enacted the statute, that properly could give rise to a different conclusion. It is a matter of public notoriety that chain drug stores in great numbers, owned and operated by corporations, are to be found throughout the United States. They have been in operation for many years. We take judicial notice of the fact that the stock in these corporations is bought and sold upon the various stock exchanges of the country and, in the nature of things, must be held and owned to a large extent by persons who are not registered pharmacists. If detriment to the public health thereby has resulted or is threatened, some evidence of it ought to be forthcoming. None has been produced, and, so far as we are informed, either by the record or outside of it, none exists. The claim, that mere ownership of a drug store by one not a pharmacist bears a reasonable relation to the public health, finally rests upon conjecture, unsupported by anything of substance, This is not enough; and it becomes our duty to declare the act assailed to be unconstitutional as in contravention of the due process clause of the 14th Amendment."

Everything that was argued as tending to invalidate the statutes before the Court in the foregoing case, and everything that was said by this Court in holding the Act utterly unsustainable, has equal application to the Act now before this Court on this review. This qualification obviously has no relation to the purposes for which the police power may be exercised, and was inserted in the statute simply as a part of the same plan that is manifest in the requirement of the higher license fees for those engaged in the business of purchasing the malt beverages from manufacturers outside the state.

IV

Views of the Trial Court

The trial court, although conceding the discriminatory effect of the statute in imposing higher license fees and burdens upon one engaged in the purchase of intoxicating liquors from manufacturers and dealers outside the State of Pennsylvania than is imposed upon one engaged in the purchase of malt beverages from manufacturers or dealers within the State, nevertheless held the Act valid upon the theory as expressed in the following language:

> "The other modified forms of prohibition we call regulation of the traffic. Importation, on the other hand, is an act. The test of its legality is by the Webb-Kenyon Act and by the Twenty-First Amendment made the law of the importing state. It might have made the test that applied by the Reed Bill—the law of a prohibition state. It was, however, made otherwise,—whether the import would be in violation of any law of the state of importation. This test is a constitutional provision. Such provisions, if conflicting, are subject to the rule applied to conflicting statutes. The latest controls. The provisions of the original Constitution, as of the earlier amendments, must give way to the later."

With some elaboration in the opinion, the foregoing is the very heart of the decision resulting in the dismissal of plaintiff's bill. If the conclusion so expressed is unsound under the decisions of this court, then the appellant is entitled to the relief prayed in its Bill. That such views cannot be sustained upon authority or reason would appear manifest from

what has preceded in this argument. The trial court by adopting the unsound principle that the Webb-Kenyon Act and the 21st Amendment made unlawful the shipment of liquors in violation of any Act of the legislature of the state lost sight of the principle announced in *Baldwin* v. *Seelig*, 294 US 511, that

> "neither the power to tax nor the police power may be used by the state of destination with the aim and effect of establishing an economic barrier against competition with the products of another state or the commerce of its residents."

Of the four cases presented to three-judge courts since the passage of the 21st amendment, only the trial court in this case has held that a state is permitted to enact discriminatory legislation against liquors manufactured or produced outside its borders. The reasoning of the courts whose views the lower court in this case expressly refused to follow, should commend to this court the conclusion of those decisions.

V

In Conclusion

In conclusion appellant submits that neither the 21st Amendment nor the Webb-Kenyon Act which are advanced by the state to sustain its legislation authorizes a state to impose discriminatory burdens or taxes upon products solely because of the out-of-state origin of such products, and that the pro-

visions of the Beverage License Law of the State of Pennsylvania which thus unfairly discriminate are unconstitutional and void.

Respectfully Submitted,

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APPENDIX

Portions of

Pennsylvania Beverage License Law Of 1935

material to the questions on this appeal:

An Act

To regulate and restrain the traffic in malt and brewed beverages, as herein defined; providing for the licensing of the manufacture, transportation, sale and distribution of such beverages; imposing license and permit fees, and providing for collection and distribution thereof; restricting ownership and interest in licensed places; permitting municipalities and townships, by vote of the electors, to prevent the licensing therein of places where such beverages may be sold for consumption on the premises, and regulating elections for this purpose; imposing duties upon county treasurers, the Pennsylvania Liquor Control Board, quarter sessions courts, district attorneys, the Department of Justice, proper authorities of political subdivisions of the State, and election officers; providing penalties; and repealing existing acts.

Section 1. Short Title. This act shall be known, and may be cited, as the "Beverage License Law."

Section 2. Definitions. The following words and terms, as used in this act, shall be construed as defined in this section:

(a) The term "malt or brewed beverage" means any beer, lager beer, ale, porter, or similar fermented malt liquor, containing one-half of one per centum or more of alcohol by volume, by whatever name such liquors may be called.

(b) The word "person" means and includes natural persons, associations, partnership and corporations.

(c) The word "manufacturer" means and includes all persons holding licenses issued by the board to engage in the manufacture, bottling, transportation, and sale of malt or brewed beverages.

(d) The term "distributor" means and includes persons licensed by the board to engage in the purchase, only from Pennsylvania manufacturers and from importing distributors, and the resale of malt or brewed beverages in the original sealed packages, as prepared for the market by the manufacturer, but not for consumption on the premises where sold, and in quantities of not less than two hundred eighty-eight fluid ounces.

(e) The term "importing distributors" means and includes persons licensed by the board to engage in the purchase from manufacturers and other persons located outside this Commonwealth, and from persons licensed as manufacturers and distributors under this act, and the resale of malt or brewed beverages in the original sealed packages as prepared for the market by the manufacturer, but not for consumption on the premises where sold, and in quantities of not less than two hundred eighty-eight fluid ounces.

(f) The term "retailer" means and includes persons licensed by the treasurer to engage in the retail sale of malt or brewed beverages, classified and defined as follows:

"Retail Dispenser" means and includes persons licensed to engage in the retail sale of malt or brewed beverages for consumption on the premises of such licensee, with the privilege of selling malt or brewed beverages in quantities not in excess of seventy-two fluid ounces in a single sale to one person, to be carried from the premises by the purchaser thereof.

(g) The term "original containers" means and includes bottles, casks, kegs or other suitable containers that have been securely capped, sealed or corked by the manufacturr, with the name and address of the manufacturer permanently affixed to the bottle, cask, keg, or other container, or to the cap or cork used in sealing same, or to a label securely affixed to a bottle.

(h) The term "license" means and includes both the person making the application therefor and the premises upon which the privileges of the license are to be exercised, and includes licenses issued under the provisions of this act.

(i) "Eating place" means a premise having a total area of not less than three hundred square feet, available to the public in one or more rooms other than living quarters, and equipped with tables and chairs accommodating thirty persons at one time.

(j) "Treasurer" means the county treasurer of the county in which is located any place specified in an application as the place for which a license is desired.

(k) "Board" means the Pennsylvania Liquor Control Board of this Commonwealth.

(l) As used in this act, the singular shall include the plural, and the masculine gender shall include the feminine and neuter.

(m) The term "manufacturer" shall mean and include all means, methods, and processes used, employed and made use of, to produce, make and manufacture for commercial purposes, malt or brewed beverages from raw materials.

(n) "Hotel" shall mean any reputable establishment operated by responsible persons of good reputation where the public may, for a consideration, obtain sleeping accommodations and meals and which, in a city, has at least eight, and, in any other place, at least four permanent bedrooms for the use of guests, and a public dining room or eating place operated by the same management having a total area, in one or more rooms, of not less than three hundred square feet, and accomodating at least thirty persons at one time.

Section 5. The manufacturers' Distributors', and Importing Distributors' Licenses.

(a) It shall be unlawful for any person to manufacture malt or brewed beverages, unless such person holds a valid manufacturer's license issued by the board. The board shall issue to any person, a resident of this Commonwealth of good repute who applies therefor, pays the license fee hereinafter prescribed, and files the bond hereinafter required, a manufacturer's license to produce and manufacturer malt or brewed beverages, and to transport, sell and deliver malt or brewed beverages at or from one or more places of manufacture or storage only in original packages in quantities of not less than two hundred eighty-eight fluid ounces, anywhere within the Commonwealth. Each individual applicant for a manufacturer's license and, in the case of partnerships and associations, each member thereof shall be a citizen of the United States and have been residents of this Commonwealth at least two years prior to the date of their respective applications. In the case of corporations organized or registered under the laws of this Commonwealth, it must appear that all of the officers and directors and the owners of, at least, fifty-one per centum of

the capital stock of the corporation are citizens of the United States and have, for a period of at least two years prior to the date of application, been residents of this Commonwealth. Licenses for places of storage shall be limited to those maintained by manufacturers at the effective date of this act, and thereafter the board shall issue no licenses for places of storage in addition to those maintained at the effective date of this act. The application for such license shall be in such form and contain such information as the board shall require. All such licenses shall be granted for the calendar year, and where a license runs for less than the full calendar year, the license fee shall be reduced one-twelfth for each full month such license was not in force during the calendar year. Every manufacturer shall keep, at his or its principal place of business within the Commonwealth, daily permanent records which shall show (a) the quantities of raw materials received and used in the manufacture of malt or brewed beverages, and the quantities of malt or brewed beverages manufactured and stored, (b) the sales of malt or brewed beverages, (c) the quantities of malt or brewed beverages stored for hire or transported for hire by or for the licensee, and (d) the names and addesses of the purchasers or other recipients thereof. Every place licensed as a manufacturer shall be subject to inspection by members of the board or by persons duly authorized and designated by the board, at any and all times of the day or night as they may deem necessary (a) for the detection of violations of this act or of the rules and regulations of the board, or (b) for the purpose of ascertaining the correctness of the records required to be kept by licensees. The books and records of such licensees shall, at all times, be open to inspection by members of the board or by persons duly authorized and designated by the board. Members of the board and its duly authorized

agents shall have the right, without hindrance, to enter any place which is subject to inspection hereunder, or any place where such records are kept, for the purpose of making such inspections and making transcripts thereof.

(b) The board shall issue to any reputable person who applies therefor, pays the license fee hereinafter prescribed, and files the bond hereinafter required, a distributor's or importing distributor's license for the place which such person desires to maintain for the sale of malt or brewed beverages, not for consumption on the premises where sold and in quantities of not less than two hundred eighty-eight fluid ounces and in original packages as prepared for the market by the manufacturer. Such licenses shall be issued only to reputable individuals, partnerships and associations who are, or whose members are, citizens of the United States and have for two years, prior to the date of their applications, been residents of the Commonwealth of Pennsylvania, or to reputable corporations organized or duly registered under the laws of the Commonwealth of Pennsylvania. Such licenses shall be issued to corporations duly organized or registered under the laws of the Commonwealth of Pennsylvania only when it appears that all of the officers and directors of the corporation are citizens of the United States, and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, and that, at least, fifty-one per centum of the capital stock of such corporation is actually owned by individuals who are citizens of the United States and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application. Such license shall authorize the holder thereof to sell or deliver malt or brewed beverages in quantities of not less than two hundred eighty-

eight fluid ounces anywhere within the Commonwealth of Pennsylvania which, in the case of distributors, have been purchased only from persons licensed under this act and, in the case of importing distributors, have been purchased from manufacturers and persons outside this Commonwealth or from persons licensed under this act.

Section 10. Filing of Applications for Distributors', Importing Distributors' and Retailers' Licenses.—Every person intending to apply for distributor's, importing distributor's or retail dispenser license as aforesaid, in any municipality or township of this Commonwealth, shall file, with the board or treasurer, as the case may be, his or its application. In the case of distributors and importing distributors applications shall be filed at a time to be fixed by the board for the particular license district as set up by the board, under the provisions of the Pennsylvania Liquor Control Act. The applicant shall at the time of filing the application pay said board or treasurer as the case may be, the filing fee of ten dollars as specified in this act.

Section 11. Application for Distributors', Importing Distributors, and Retailers' Licenses.—Application for distributors', importing distributors' and retailers' licenses shall contain the following information and statements—

(a) The name and residence of the applicant, and how long he has resided there; and if an association, partnership or corporation the residences of the members, officers and directors, for the period of two years next preceding the date of such application;

(b) The particular place for which the license is desired, and a detailed description thereof;

(c) Place of birth of applicant, and if a naturalized citizen where and when naturalized; and if a corporation organ-

ized or registered under the laws of the Commonwealth, when and where incorporated, with the names and addresses of each officer and director; if the application is for a distributor's, importing distributor's license and the applicant therefor is a corporation, the application shall also contain a statement that all of the officers and directors are citizens of the United States, and have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, and the further statement that at least fifty-one per centum of the capital stock of the corporation is actually owned by individuals who are citizens of the United States and who have been residents of the Commonwealth of Pennsylvania for a period of at least two years prior to the date of application, together with the names and addresses of all stockholders;

(d) Name of owner of premises, and his residence;

(e) That the applicant is not, or in case of a partnership or association that the members or partners are not, and in the case of a corporation that the officers and directors are not, in any manner pecuniarily interested, either directly or indirectly, in the profits of any other class of business regulated under this act, except as hereinafter permitted;

(f) That applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed, and that no other person shall be in any manner pecuniarily interested therein during the continuance of the license, except as hereinafter permitted.

(g) Whether applicant, or in case of a partnership or association any member or partner thereof, or in case of a coporation any officer or director thereof, has, during the three years immediately preceding the date of said application, had a license for the sale of malt or brewed beverages or spirituous

and vinous liquors revoked, or has, during the same period, been convicted of any criminal offense, and, if so, a detailed history thereof;

(h) A full description of that portion of the premises for which license is asked, and, if any other business is to be conducted concurrently with the sale and distribution of malt or brewed beverages, a full history of such business, relating the nature thereof, the length of time it has so previously been conducted by the applicant, or his predecessor, at such location;

(i) Every club applicant shall file, with and as a part of its application, a list of the names and addresses of its members, directors, officers, agents and employes, together wth the dates of their admission, election or employment, and such other information with respect to its affairs as the board shall require. The treasurer shall refuse to issue licenses to clubs when it appears that the operation of the club license would inure to the benefit of individual members, officers, agents or employes of the club rather than to the benefit of the entire membership of the club.

There shall be annexed to such application a certificate, signed by at least twelve reputable qualified electors of the ward, borough or township in which such malt or brewed beverages are to be sold, setting forth that they have been acquainted with the applicant or applicants, or the members of the association or partnership, or the directors and officers of the corporation where the applicant is a corporation, that they have good reason to believe that each and all the statements contained in the petition are true, and they therefore believe that the application should be granted and that the license should issue.

The application must be verified by affidavit of applicant, and if any false statement is intentionally made in any part of

the application, the affiant shall be deemed guilty of the crime of perjury. A license shall not be granted by the board or treasurer, as the case may be, unless the application contains the information herein required, and the premises meet such reasonable sanitary requirements as the board by regulation shall prescribe.

Section 12. Prohibitions against the Grant of Licenses.—(a) Any retailer dispenser may be granted licenses to maintain, operate or conduct any number of places for the sale of malt or brewed beverages, but a separate license must be secured for each place where malt or brewed beverages are sold.

(b) No person shall possess or be issued more than one distributor's, importing distributor's license; no person shall possess or be issued more than one class of license. No distributor or importing distributor shall maintain or operate any place where sales are made other than that for which the license is granted. No distributor or importing distributor shall maintain any place for the storage of malt or brewed beverages unless the same has been approved by the board. No distributor's or importing distributor's license shall be issued for any premises in any part of which there is operated any retail license for the sale of liquor or malt or brewed beverages.

(c) Licenses shall be granted by the board or treasurer only to reputable individuals, or to associations, partnerships and corporations whose members or officers and directors are reputable individuals.

A retail dispenser license shall not be issued to any individual unless such individual, for one year immediately preceding the date of his application, has been a resident of the county wherein his place of business is or is to be located.

Section 13. Revocation and Suspension of Licenses.—

(a) After a license has been granted by the treasurer, upon petition of the Attorney General, the board, the treasurer, the district attorney, or fifteen or more taxpayers, residents of the ward, borough or township where the place of business is located, to the court of quarter sessions, and upon sufficient cause being shown or proof being made to the court that licensee holding a license, or any partners, members, officers or directors of the licensee, has or have violated any of the laws of this Commonwealth relating to the sale of malt or brewed beverages, or relating to the manufacture, sale or transportation of alcohol or other alcoholic beverages, it may, upon due notice and proper hearing being given to the person so licensed, suspend or revoke the said retail license issued by the treasurer. The court shall assess or remit the costs in its discretion.

Any licensee whose retail license is revoked shall be ineligible to have a license or permit under this act, or under another act relating to the manufacture, sale or distribution of malt liquor or other alcoholic liquors, until the expiration of three years from the date his license was revoked.

(b) The board upon sufficient cause being shown or proof being made that any licensee holding a license issued by the board, or any partners, members, officers or directors of the licensee has or have violated any of the laws of this Commonwealth relating to the manufacture, sale, possession or transportation of malt or brewed beverages, alcohol or other alcoholic beverages may, upon due notice and proper hearing being given to the person so licensed, suspend or revoke the license issued by the board under the provisions of this act. In all cases where the board shall suspend or revoke a license, it shall set forth its finding of fact, the evidence from which such findings of fact are made, and the reasons upon which its action is based. Any licensee whose license is revoked by

the board shall be ineligible to have a license under this act or under any other act of the Commonwealth of Pennsylvania relating to the manufacture, transportation or sale of liquor or malt or brewed beverages until the expiration of three years from the date such license was revoked. In the event the board shall revoke a license, no license shall be granted for the premises in which the said license was conducted for a period of at least one year after the date of the revocation of the license conducted in the said premises. Any person aggrieved by the suspension or revocation of a license issued by the board under this act may, within twenty days after such suspension or revocation, appeal to the court of quarter sessions of the county in which the premises in which said license was conducted are located. Such appeal shall be upon the petition of the person aggrieved who shall serve a copy thereof upon the board, whereupon a hearing shall be held upon the petition by by the court after ten days notice to the board which shall be represented in the proceedings by the Department of Justice. At such hearing, testimony may be presented by the applicant and the board, after the consideration of which the court shall either sustain the suspension or revocation of the license, modify or reverse the order of the board. In all such cases of appeal, the court of quarter sessions shall file of record at least a brief statement in the form of an opinion of the reasons for the ruling or order.

(c) Any person aggrieved by the action of the court of quarter sessions shall have the right to appeal to the Superior Court. The Superior Court shall examine the record upon which such appeal is based and shall determine whether or not the action of the court of quarter sessions was properly based upon the evidence presented to it. The action of the Superior Court shall be final.

Section 18. All Licensees to Furnish Bond.—No license shall be issued to any manufacturer, distributor, importing distributor, or retailer, or to any railroad, pullman or steamship company, until the licensee shall have first executed a bond to the Commonwealth of Pennsylvania, and a warrant of attorney to confess judgment, in the penal sum hereinafter prescribed. Bonds of all applicants except manufacturer's shall have sufficient sureties, either personal or a surety company authorized to do business in this Commonwealth. Bonds with personal surety shall be executed by not less nor more than two individuals as sureties, each of whom shall own real estate of an assessed valuation over and above all encumbrances and outstanding liabilities of two thousand dollars ($2000) or more. Bonds of manufacturers shall have as surety a surety company authorized to do business in this Commonwealth. Such bonds shall not be accepted until approved by the board or treasurer, as the case may be. All such bonds shall be conditioned for the faithful observance of all the laws of this Commonwealth relating to the manufacture, sale, possession or transportation of malt or brewed beverages or alcohol or any other alcoholic beverages. All bonds shall be filed with and retained by the board or treasurer, as the case may be. The penal sum of bonds filed by the manufacturers shall be ten thousand ($10,000.00) dollars for each place at which the licensee is authorized to manufacture. The penal sum of bonds filed by distributors shall be one thousand ($1,000.00) dollars and for importing distributors two thousand ($2,000.00) dollars. The penal sum of bonds filed by all other licensees shall be one thousand ($1,000.00) dollars for each place at which the licensee is authorized to sell malt or brewed beverages except that in case of railroad, pullman or steamship companies the penal sum of the bond to be filed shall be one thousand ($1,000.00)

dollars irrespective of the number of licensed cars or ships operated by such companies. Every such bond may be forfeited when a license is revoked and shall be turned over to the district attorney, or the Attorney General, as the case may be, to be sued out for collection, if, and when, the licensee's license shall have been revoked and his bond forfeited as herein provided.

Section 19. License Fees; Distribution of Revenues.—No license shall be issued to any manufacturer, distributor, importing distributor or retail dispenser until the licensee shall have first paid an annual license fee for such grant, as follows:

(a) In the case of a manufacturer, the license fee shall be one thousand ($1,000.00) dollars for each place of manufacture, and shall be paid to the board.

(b) In the case of a distributor, the license fee shall be four hundred ($400.00) dollars, and shall be paid to the board.

(c) In the case of an importing distributor, the license fee shall be nine hundred dollars ($900.00), and shall be paid to the board.

(d) In the case of a retail dispenser, the license fee shall be graduated according to the population of the municipal unit or township in which the place of business is located, and shall be paid to the treasurer as follows:

	Retail Dispenser
(a) Less than 10,000	$100
(b) 10,000 and more, but less than 50,000	150
(c) 50,000 and more, but less than 100,000	200
(d) 100,000 and more, but less than 150,000	250
(e) 150,000 and more	300

(d) In the case of an incorporated club, the fee shall be twenty-five dollars in all cases, and shall be paid to the treasurer.

(e) In the case of a public service license for cars, the fee shall be ten dollars per car for the maximum number of cars operated on any one day on which malt or brewed beverages are sold, to be paid to the board.

(f) In the case of a public service license for the sale of malt or brewed beverages on a boat or vessel, the fee shall be fifty dollars for each such vessel or boat, and shall be paid to the board.

(g) The fee for filing applications for licenses and for renewals shall be ten dollars which, together with fees for transfers, shall be paid to the board or treasurer issuing the licenses.

(h) The license fees fixed by this section shall be paid before the license or renewal is issued.

(i) The license fees for manufacturers, distributors, importing distributors and public service licenses, and all filing fees for such licenses and all permit fees shall be transmitted to the State Treasurer by the board, and shall be paid into the State Stores Fund. Fees paid for retail dispensers licenses shall be paid by the treasurer to the municipalities and townships in which the licensed places are located. Filing fees collected by the treasurer shall be for the use of the county.

Section 23. Unlawful Acts.—It shall be unlawful

(a) For any manufacturer, importing distributor, or distributor or the servants, agents or employes of the same to sell trade or barter in malt or brewed beverages between the hours of twelve o'clock midnight of any Saturday and two o'clock in the forenoon of the following Monday.

(b) For any hotel, restaurant or public service licensee or the servants, agents or employes of such licensees to sell, trade or barter in beverages between the hours of twelve o'clock midnight of any Saturday and seven o'clock in the forenoon

of the following Monday, or between the hours of two o'clock antemeridian and seven o'clock antemeridian of any day.

(c) For any licensee to sell, furnish or give any beverages to any person visibly intoxicated, or to any insane person, or to any minor, or to habitual drunkards, or persons of known intemperate habits.

(d) For any hotel, restaurant or public service licensee to sell, furnish or give any malt or brewed beverages to any person until one hour after the time fixed by law for the closing of polling places on days on which a general, municipal, special or primary election is being held.

(e) For any licensee to sell, or offer to sell, or purchase or receive, any malt or brewed beverages except for cash, excepting credits extended by a hotel or club to bona fide registered guests or members. No right of action shall exist to collect any claims for credit extended contrary to the provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by such purchaser for containers, or as a deposit on containers when title is retained by the vendor if such containers or packages have been returned to the manufacturer, distributor, importing distributor or other vendor. Nothing herein contained shall prohibit a manufacturer from extending usual and customary credit for malt or brewed beverages sold to customers or purchasers who live or maintain places of business outside of the Commonwealth of Pennsylvania, when the beverages so sold are actually transported and delivered to points outside of the Commonwealth.

(f) For any licensee to sell, offer to sell, or furnish any beverage to any person on a pass book or store order, or to

receive from any person any goods, wares, merchandise or other articles except containers returned in exchange for malt or brewed beverages.

(g) For any licensee, except a manufacturer on his own premises, to advertise on the outside of any licensed premises, or on any lot of ground on which licensed premises are situate. or on any building of which the licensed premises are a part, any beverages by trade name, trade-mark, or in any manner which would indicate the manufacturer, producer or place of manufacture or production of any beverage, unless the actual value of such advertising device shall be not more than seventy-five dollars ($75.00).

(h) For any manufacturer, importing distributor or distributor to give, furnish or sell, or for any other licensee to lease, purchase or receive for display or to display on the inside of any licensed premises any advertising matter indicating the trade-mark or trade name of any particular beverage or the manufacturer, producer or place of manufacture or production of any beverage unless the actual value of such advertising device shall not exceed twenty-five dollars.

(i) For any licensee to advertise, or hold out for sale, any malt or brewed beverage by trade name or other designation which would indicate the manufacturer or place of production of the said beverage, unless he shall actually have on hand and for sale a sufficient quantity of the particular beverage so advertised to meet requirements to be normally expected as a result of such advertisement or offer.

(j) For any retail dispenser to furnish or serve any malt or brewed beverages from any faucet, spigot or other dispensing apparatus, unless the trade name or brand of the product served shall appear in full sight of the customer and in legible lettering upon such faucet, spigot or dispensing appartus.

(k) For any licensee or his or its servants, agents or employes to transport, sell, deliver or purchase any malt or brewed beverage upon which there shall appear a label or other informative data which, in any manner, refers to the alcoholic contents of the malt or brewed beverage or which refers, in any manner, to the original alcoholic strength, extract or balling proof from which such beverage was produced. This clause shall not be construed to prohibit a manufacturer from designating, upon the label or descriptive data, the alcoholic contents of malt or brewed beverages intended for shipment into another state or territory when the laws of such state or territory require that the alcoholic content of the malt or brewed beverage must be stated upon the package.

(l) For any retail licensees, except clubs, to permit in any licensed premises, dancing, theatricals, floor show or moving picture exhibitions of any sort, unless the licensee shall have first received from the board a special permit to provide such entertainment, or for any retail licensee under any circumstances to permit in any licensed permises, any lewed, immoral or improper entertainment regardless of whether or not a permit to provide entertainment has been obtained. The board shall have power to provide for the issue of such special permits and to require a fee of twenty-five dollars for permits authorizing theatricals, floor shows or moving picture exhibitions. All such fees shall be paid into the State Stores Fund.

(m) For any "distributor" or importing distributor, without the approval of the board, to engage on the licensed premises in any other business whatsover except the business of distributing malt or brewed beverages or non-intoxicating beverages.

(n) For any distributor, importing distributor, retailer to have in his possession on any licensed premises, or to permit

the storage on the licensed premises, of any spirituous, vinous or alcoholic liquors or alcohol of any sort except malt or brewed beverages.

(o) For any licensee to manufacture, import, sell, trade or barter in any spirituous, vinous or other alcoholic liquors or alcohol except malt or brewed beverages.

(p) For any licensee to issue, publish or post or cause to be issued, published or posted any advertisement of a malt or brewed beverage including a label which shall refer in any manner to the alcoholic strength of the malt or brewed beverages manufactured, sold or distributed by such licensees, or to use in any advertisement or label such words as "full strength," "extra strength," "high test," "high proof," "pre-war strength," or similar words or phrases which would lead or induce a consumer to purchase a brand of malt or brewed beverage on the basis of its alcoholic content, or to use in or on any advertisement or label any numeral unless adequately explained in type of the same size prominence and color, or for any licensee to purchase, transport, sell or distribute any malt or brewed beverage advertised or labled contrary to the provisions of this clause.

(q) For any licensee or any agent, employe or representative of any licensee to give or permit to be given, directly or indirectly, money or anything of substantial value in an effort to induce agents, employes or representatives of customers or prospective customers to influence their employers or principals to purchase or contract to purchase malt or brewed beverages from the donor of such gift or to influence such employers or principals to refrain from dealing or contracting to deal with other licensees.

(r) For any licensee to offer or give any prize, premium, gift or other similar inducement to either trade or consumer

buyers except advertising novelties of nominal value which the board shall define.

(s) For any licensee to offer, pay, make or allow, or for any licensee to solicit or receive, any allowance or rebate, refunds or concessions whether in the form of money or otherwise to induce the purchase of malt or brewed beverages manufactured or sold by the licensee.

(t) For any licensee to fail to keep, for a period of at least two years, complete and truthful records covering the operation of his license and particularly showing the date of all purchases of malt or brewed beverages, the actual price paid therefor and the name of the vendor, or to refuse the board or an authorized employe of the board access thereto or the opportunity to make copies of the same when the request is made during business hours.

(u) For any licensee to refuse the board, or any of its authorized employes, the right to completely inspect the entire licensed premises at any time during which the premises are open for the transaction of business.

(v) For any retail dispenser to furnish, give, or sell below a fair cost any lunch to any consumer except such articles of food as the board may authorize and approve.

(w) For any person to hawk or peddle malt or brewed beverages or to distribute malt or brewed beverages unless an order therefor has been previously received.

(x) For any licensee to be, directly or indirectly, employed by any other licensee engaged in the manufacture, storage, transportation or sale of spirituous or vinous liquors, alcohol or malt or brewed beverages.

(y) For any licensee to knowingly sell any malt or brewed beverages to any person engaged in the business of illegally selling liquor or malt or brewed beverages.

(z) For any person to transport or import any malt or brewed beverages into this Commonwealth, except in accordance with the rules and regulations of the board, or for any person to transport malt or brewed beverages into or within this Commonwealth unless there shall be affixed to the original containers in which such malt or brewed beverages are transported stamps or crowns evidencing the payment of the malt liquor tax to the Commonwealth: Provided, however, That this clause shall not be construed to prohibit transportation of malt or brewed beverages through this Commonwealth and not for delivery therein if such transporting is done in accordance with the rules and regulations of the board.

Section 28. Interlocking Business Prohibited.—(a) No manufacturer, and no officer or director of any manufacturer, shall, at the same time, be a distributor, importing distributor or retail dispenser, or an officer, director or stockholder or creditor of any distributor, importing distributor or retail dispenser, nor, except as hereinafter provided, be the owner, proprietor or lessor of any place covered, directly or indirectly, by any distributor's, importing distributor's malt or brewed beverage or liquor license.

(b) No distributor or importing distributor, and no officer or director of any distributor or importing distributor, shall, at the same time, be a manufacturer or retailer, or be an officer, director, stockholder or creditor of a manufacturer or retailer, or be the owner, proprietor or lessor of any place covered by any other malt or brewed beverage or liquor license.

(c) No licensee licensed under this act, shall directly or indirectly own any stock of, or have any financial interest in, any other class of business licensed under this act.

(d) Excepting as hereinafter provided, no manufacturer, importing distributor or distributor shall in any wise be inter-

ested, either directly or indirectly, in the ownership or leasehold of any property, or in any mortgage against the same for which a liquor or retail dispensers license is granted; nor shall a manufacturer, importing distributor or distributor, either directly or indirectly, lend any moneys, credit, or equivalent thereof to any retailer in equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment or business operated under a liquor or retail dispenser's license excepting only the usual and customary credits allowed for returning packages or containers in which malt or brewed beverages were packaged for market by the manufacturer.

(e) Excepting as hereinafter provided, no manufacturer shall in any wise be interested, either directly or indircetly, in the ownership or leasehold of any property, or any mortgage lien against the same, for which a distributor's or importing distributor's license is granted; nor shall a manufacturer, either directly or indirectly, lend any moneys, credit, or their equivalent to any distributor or importing distributor in equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment or business where malt or brewed beverages are licensed for sale by a distributor or importing distributor, excepting only the usual credits allowed for the return of packages or containers in which malt or brewed beverages were originally packaged for the market by the manufacturer.

(f) No distributor, importing distributor or retail dispenser shall, in anywise, receive, either directly or indirectly, any credit, loan, moneys, or the equivalent thereof from any other licensee, or from any officer, director or firm member of other licensee, or from or through a subsidiary or affiliate of another licensee or from any firm, association or corporation, except banking institution, in which another licensee or any officer,

director or firm member of another licensee has a substantial interest or exercises a control of its business policy for equiping, fitting out, payment of license fee, maintaining and conducting, either in whole or in part, an establishment or business operated under a distributor's, importing distributor's or retail dispensers license excepting only the usual and customary credits allowed for the return of packages or containers in which malt or brewed beverages were packed for the market by the manufacturer.

The purpose of this section is to require a separation of the financial and business interests between the various classes of business regulated by this act, and no person or corporation shall by any device whatsoever, directly or indirectly, evade the provisions of this section. But in view of existing economic conditions, nothing contained in this section shall be construed to prohibit the ownership of property or conflicting interest by a manufacturer of any place occupied by a distributor, importing distributor or retail dispenser after the manufacturer has continuously owned and had a conflicting interest in such place for a period of at least five years prior to the effective date of this act.

The term "manufacturer", as used in this section, shall include manufacturers as defined in this act, and any person manufacturing any malt or brewed beverages outside of this Commonwealth.

Section 32B. (b) All licenses issued to distributors for the license year beginning June first, one thousand nine hundred and thirty-five, prior to the effective date of this act and which remain unrevoked on that date, shall be in force, subject to adjustment, as hereinafter provided, for such period of a whole license year as the amount of license fee paid to the county treasurer bears to the amount of the license fee payable for a

distributor's license under this act but no such license shall be deemed to expire prior to July first, one thousand nine hundred and thirty-five, notwithstanding the amount of the license fee paid. The board shall have power without hearing to issue, to the holders of such distributor's licenses, new licenses under the provisions of this act to expire on the date fixed by the board as the expiration date of licenses in the district in which granted, for which license a fee shall be paid equal to one-twelfth of the fee fixed by this act for each month such license is to be in force. In fixing the expiration dates of existing licenses granted to distributors by county treasurers and the dates when licenses issued by the board shall become effective, the board shall not divide any calendar month, but shall have full discretion to adjust the time for which credit shall be given for the license fee paid to the county treasurers, except as above excepted.

(c) Upon final enactment of this act, the board is authorized to issue importing distributors' licenses to those who qualify, without hearings, for such period of time as the board determines will expire between such date and the beginning of the license year for the district in which the licensed place is located, upon payment of a license fee at the schedule of rates herein set forth, said fee to be determined on a monthly basis.

PENNSYLVANIA LIQUOR CONTROL BOARD

REGULATION No. 51

July 25, 1935

Subject: Application for Distributors and Importing Distributors Licenses

Section 1. Except as hereinafter provided, every person holding a Malt Liquor Distributor's License issued by the respective County Treasurers of this Commonwealth shall, not later than August 10, 1935, file with the Pennsylvania Liquor Control Board an application for a Malt or Brewed Beverage Distributor's or Importing Distributor's License on forms furnished by the Board, together with a surety bond in the amount of One Thousand ($1000.00) Dollars in the case of a Distributor and in the case of an Importing Distributor in the amount of Two Thousand ($2,000.00) Dollars, an application fee of Ten ($10.00) Dollars and a license fee calculated from July 1, 1935 at the rate of Thirty-three and 33-100 ($33.33) dollars in the case of a Distributor and in the case of an Importing Distributor at the rate of Seventy-five ($75.00) dollars for each month the license will be in force in the particular license district fixed by the Board in which the Distributor's or Importing Distributor's place of business is located less a credit of the unused portion of the fee paid by the Distributor to the County Treasurer for such license calculated on a monthly basis from July 1, 1935.

In the event that the Distributor fails to file an application as hereinbefore set forth, then he may continue to operate as a Distributor defined in the Act of July 18, 1935, No. 398, known as the Beverage License Law, only for such a period under his present license as the unused portion of the fee

paid by such Distributor to the County Treasurer for such license will bear to the annual fee of Four Hundred ($400.00) Dollars, both calculated on a monthly basis.

Failure to file an application as above set forth may result in a Distributor being without a license between the expiration date of his present license and the license year as set up by the Board for the district in which his place of business is located.

EXCEPTION

Licenses of Distribu[illegible]o paid to the County Treasurer fees of $37.50 and $50.00 respectively will expire on August 1, 1935, at which time operations must be discontinued, unless an application for a Distributors' or an Importing Distributor's License is filed with the Board prior to that date, as the unused balance of such fees calculated as of July 1, 1935 is not sufficient on the basis of the new fees calculated at the rate of $33.33 per month to extend such license beyond said date.

Section 2. Persons holding both a Distributor's License and a Liquor Importer's License may under Act 398 of July 18, 1935 known as the Beverage License Law hold only one class of license. Such distributor if he prefers to retain his Liquor Importer's License will be given such time to dispose of his stock of malt or brewed beverages as the Board in each individual case may determine. Each such Distributor shall furnish to the Board, not later than August 1, 1935 a complete inventory of the stock on hand of malt or brewed beverages both domestic and imported, if any.

Pennsylvania Liquor Control Board.

WILSON ACT

of August 8, 1890, (tit. 27, Sec. 121, USCA), provides as follows:

> "Sec. 121. State statutes as operative on termination of transportation; original packages. All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced in original packages or otherwise."

WEBB-KENYON ACT

of March 1, 1913, (tit. 27, Sec. 122, USCA), provides as follows:

> "Sec. 122. Shipments into states having dry laws; prohibtion. The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, * * * into any other State, Territory, or District of the United States, * * * which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or

in any manner used, either in the original package or otherwise, in violation of any laws of such State, Territory, or District of the United States, * * * is hereby prohibited."

AMENDMENT XXI

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
Southern Division

Pacific Fruit & Produce Company, a corporation, Plaintiff, vs. Clarence D. Martin, Governor of the State of Washington, et al., Defendants,	Equity No. 569 *Memorandum Decision Upon Application for Interlocutory Injunction and Motions to Strike and Dismiss.*

Filed February 28, 1936.

Before HANEY, Circuit Judge, and CUSHMAN and BOWEN, District Judges.

CUSHMAN, District Judge:

The foregoing statement does not include trial amendments of the Bill of Complaint filed after the hearing, for the reason that, because of the conclusion reached, added statement is unnecessary.

The motion of the defendants to strike certain of the allegations of the Bill of Complaint will be denied.

The motion to dismiss, insofar as it is stated in paragraphs I and II of the Motion, will be denied without discussion.

The statutes of which particular complaint is made, Section 2 of Chapter 158 of the Session Laws of 1935 (Rem. Rev. Stat., Sec. 7306-23) and Section 3 of Chapter 174, of the Session Laws of 1935 (Rem. Rev. Stat. Sec. 7306-27), if con-

strued and applied as described in the Bill of Complaint, in conjunction, violate the commerce clause, Article I, Section 8, Clause 3 of the Constitution of the United States, unless the Twenty-first Amendment repealed the commerce clause, insofar as interstate commerce in intoxicating liquor is concerned. This it did not do. Young's Market Co. v. State Board of Equalization, 12 F. Supp. 140; Joseph Triner Corporation v. Arundel, 11 F. Supp. 145.

While it may be conceded that the intent of the Wilson Act, 26 Stat. 313 (Title 27, U. S. C. A., Sec. 121, Pocket Part), the Webb-Kenyon Act, 37 Stat. 699-49 Stat. 877 (Title 27, U. S. C. A., Sec. 122, Pocket Part), the Act of March 22nd, 1933, 48 Stat. 19, Sec. 6, referred to in Defendants' brief as the "Collier Act", repealed and in part re-enacted, 49 Stat. 877, Sec. 202 (a) and (b), and the Twenty-first Amendment, was to take from intoxicating liquor the protection of the interstate commerce laws insofar as necessary to deny them an advantage over the intoxicating liquors produced in the state into which they were brought, yet, none of them show an intent or purpose to so abdicate control over interstate commerce as to permit discrimination against the intoxicating liquor brought into one State from another.

It has been contended, upon behalf of defendants, that Section 2 of Chapter 158, supra, of which complaint is made, does not so discriminate. With this contention we are unable to agree. This enactment, in the case of intoxicating liquor made and purchased without the state, denies to the owner the right to use it as he could use it if made within the state. If made within the state, both the owner and the state could reach the manufacturer and compel observance of its law or obtain relief for its violation, but neither the owner nor the

State has such power over the outside manufacturer who in no way is within the state.

Defendants, in their brief, state:

> "Plaintiff is the exclusive sales agency of the Pabst Products in the state of Washington."

If such be the fact it is in no way made to appear, either by the Bill of Complaint or by any showing made upon the motions now considered.

It follows that Section 2 of Chapter 158, supra, is void, not only because it violates the commerce clause, Article I, Section 8, clause 3, but also the Fourteenth Amendment, in that its enforcement, as proposed, would take from the plaintiff its property without due process of law, and also in that it denies plaintiff the equal protection of the law. Young's Market Co v. State Board of Equalization, 12 F. Supp. 140.

If the decision of the District Court for the Eastern District of Pennsylvania in Premier-Pabst Sales Corporation v. Grosscup, et al., 12 F. Supp. 970, is opposed to any of the conclusions which we have reached we feel constrained, both upon reason and the persuasiveness of the authorities herein cited, to so hold without qualification.

If interstate commerce is to be taxed, in addition to that necessary to defray the expense of inspection, the power to do so is that of the Federal government and not that of the State.

The orderly and secure regulation of the manufacture and sale of property in each of the states by such states and of the regulation and fostering of commerce between them require that neither trammel nor encroach upon that authority which belongs to the other. The authority of neither is to be extended by construction of constitution or statute beyond what is clearly implied from the recognized authority of each. This enactment attempts to reach beyond the State's actual author-

ity and take something from that of the nation, a sister state and the individual.

The determination reached obviates the necessity of any discussion concerning the validity of the statute under the State constitution. It also obviates the necessity of considering the validity of Section 3 of Chapter 174, supra, disassociated from Section 2 of Chapter 158, supra.

An Interlocutory Injunction will issue.

The Motion to Dismiss will be denied.

Any order based upon the foregoing rulings will be tentatively settled before the local judge upon notice.

The Clerk is directed to notify the attorneys for the parties of the filing of this decision.

BERT E. HANEY, *Circuit Judge.*
EDWARD E. CUSHMAN, *District Judge.*
JOHN C. BOWEN, *District Judge.*

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No. 745

In the Supreme Court of the United States

OCTOBER TERM, 1935

PREMIER-PABST SALES COMPANY, A CORPORATION OF THE STATE OF DELAWARE, COMPLAINANT

v.

WALTER T. GROSSCUP, W. WORRELL WAGNER AND LEO A. CROSSEN, constituting the PENNSYLVANIA LIQUOR CONTROL BOARD; CHARLES F. KELLEY, District Attorney of Philadelphia County, Pennsylvania; WILL B. HADLEY, County Treasurer of Philadelphia County, Pennsylvania; CHARLES J. MARGIOTTI, Attorney General of the Commonwealth of Pennsylvania; and GEORGE H. EARLE 3d, Governor of the Commonwealth of Pennsylvania,

Defendants

BRIEF FOR APPELLEES

WALTER T. GROSSCUP, W. WORRELL WAGNER and LEO A. CROSSEN, constituting the PENNSYLVANIA LIQUOR CONTROL BOARD; CHARLES J. MARGIOTTI, Attorney General of the Commonwealth of Pennsylvania; and GEORGE H. EARLE, 3rd Governor of the Commonwealth of Pennsylvania.

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THOMAS I. GUERIN,
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State Capitol,
Harrisburg, Pa.

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In the Supreme Court of the United States

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No. 745

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v.

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Defendants

BRIEF FOR APPELLEES

RESTATEMENT OF FACTS

This matter comes before the Court on appeal by The Premier-Pabst Sales Company, a corporation of the State of Delaware, from the decree of a three-judge Court dismissing the appellant's Bill of Complaint, praying for a declaratory judgment and an injunction restraining the appellees from enforcing certain provisions of an act of assembly of the Commonwealth of Pennsylvania approved July 18, 1935, P. L. 1217 (Act No. 398), known as the "Beverage License Law," on the ground that the said provisions are unconstitutional. The decree of the Court sustained the constitutionality of the act.

The Bill of Complaint assigns certain provisions of the said Beverage License Law, enacted to regulate

and restrain the traffic in malt and brewed beverages and which re-enacts and amends the Act of the Commonwealth of Pennsylvania approved May 3, 1933, P. L. 252, as amended by the Act of December 20, 1933 (Special Session 1933-34), P. L. 75, as in contravention to the Commerce Clause (section 8, of article I), the Fourteenth Amendment, and the Privileges and Immunities Clause (section 2 of Article IV) of the Constitution of the United States.

More specifically and particularly, the Bill of Complaint attacks the following provisions of said Act:

> Section 18 of the Act requires distributors to file a bond in the penal sum of one thousand dollars; importing distributors are required to file a bond in the penal sum of two thousand dollars; bonds executed to the Commonwealth.
>
> Section 19 of the Act requires a distributor to pay an annual license fee of four hundred dollars; importing distributors are required to pay an annual license fee of nine hundred dollars; fees payable to the Liquor Control Board to be transmitted to the State Treasury and paid into The State Stores Fund.
>
> Section 5 (b) of the Act provides that licenses shall be issued to corporations duly organized or registered under the laws of Pennsylvania only when it appears that all of the officers and directors thereof are citizens of the United States and have been residents of Pennsylvania for a period of at least two years prior to the date of application, and at least fifty-one percent of the capital stock of such corporations is actually owned by individuals who are citizens of the United States and have been residents of Pennsyl-

vania for a period of at least two years prior to the date of application.

Distributors are defined by Section 2 (d) of the Act as purchasers from Pennsylvania manufacturers and from importing distributors, but are restricted in sales to retail dispensers and consumers only.

Importing distributors are defined by section 2 (e) of the Act as purchasers from manufacturers and other persons located outside of the Commonwealth and from persons licensed as manufacturers and distributors under the Act, but are not restricted in sales to retail dispensers and consumers; they may sell also to other distributors and other importing distributors, a privilege denied to mere distributors.

The Liquor Control Board is authorized to license distributors and importing distributors to engage in the purchase and resale of malt or brewed beverages in the original packages as prepared for the market by manufacturers but not for consumption on the premises where sold.

Regulation No. 51 of the Liquor Control Board, issued July 25, 1935, rules that holders of Malt Liquor Distributors Licenses file applications with the Board for Malt or Brewed Beverage Distributors' or Importing Distributors' Licenses not later than August 10, 1935, and allows credit for the unused portion of the fee paid to the County Treasurer under the former Act of which the present legislation is an amendment. The Act provides fines and penalties for violation thereof and of the rules and regulations of said Board.

The Premier-Pabst Sales Company is a corporation of the State of Delaware, duly registered as a foreign corporation under the laws of the State of Pennsylvania wherein it maintains a place of business at 1601 Chestnut Street, Philadelphia and is there engaged as a distributor of malt or brewed beverages imported by it into Pennsylvania.

The appellant is a subsidiary of the Premier-Pabst Corporation, a corporation of the State of Delaware. The parent corporation is not registered as a foreign corporation in Pennsylvania, but is engaged in the manufacture of malt or brewed beverages at Milwaukee, Wisconsin, and Peoria, Illinois. The officers and directors of the appellant are not and have not been residents of the State of Pennsylvania, and all of its capital stock is owned by the said Premier-Pabst Corporation.

The appellant, at the time of and for some time prior to the filing of its Bill of Complaint in the instant case, was the holder of a Pennsylvania beer distributor's license issued by the Treasurer of Philadelphia County, under the provisions of the Act of the General Assembly of Pennsylvania, approved the 20th day of December 1933 (Special Session 1933-34), P. L. 75, known as the "Malt Liquor License Law." It has not applied for nor received the license required by the Beverage License Law in question

SUMMARY OF THE ARGUMENT

I. The appellant's right to maintain this action is predicated upon its averment that it possesses a valid distributor's license.

II. The right to sell intoxicating liquors is not one of the privileges and immunities of citizens of the United States which the States are forbidden to abridge.

III. State prohibition or restriction of the manufacture, sale and use of intoxicating liquors within its limits and diminution in the value of private property resulting therefrom is consistent with and is not deprivation without due process of law.

IV. The classification of a distributor and an importing distributor prescribed by the statute in question is neither discriminatory nor unreasonable.

V. The efficacy of State regulation and restraint of traffic in intoxicating liquors is guaranteed by the Twenty-first Amendment to the Constitution of the United States, without qualification by the law of interstate commerce.

VI. The statute in question was enacted in the exercise of the police power of the State to regulate and restrain the traffic in malt and brewed beverages. All of its provisions are reasonable and germane to the subject expressed in the title, and essential to properly control said traffic.

VII. Effect of severability clause of the statute.

ARGUMENT

I.

The Appellant's Right to Maintain this Action is Predicated upon Its Averment That It Possesses a Valid Distributor's License.

The appellant's substantial interest is based upon a valid beer distributor's license issued to it under the provisions of the Act of Assembly of the Commonwealth of Pennsylvania approved the third day of May, 1933, P. L. 252, as amended. It avers in paragraph six of the Bill of Complaint (R. 7) that it is a foreign corporation, registered to transact business in Pennsylvania and that all of its officers and directors are non-residents of Pennsylvania. Under the provisions of the said Act of Assembly, the Treasurer of Philadelphia County who issued the said license, and the appellant, the recipient thereof, issued and received respectively said license in violation of said Act, which specifically provides that no such license shall be issued to any corporation unless all the officers and directors thereof have been residents of the Commonwealth of Pennsylvania for a period of three years prior to application.

It seems to the appellees, that the argument of the appellant (Appellant's Brief, Pages 54-55) which would lead to an impression that at the time it secured from the Treasurer of the County of Philadelphia the license which it holds under the Act of May 3, 1933, P. L. 252, as amended, all its officers and directors were residents of Pennsylvania, is an imposition upon this Court. We believe that counsel in appearing be-

fore this Court owe a duty to disclose to the Court the true state of facts upon which their case is based and not to seek by half truths to mislead the Court into believing that the officers and directors of the appellant were residents of Pennsylvania at the time of its license application. We now assert that at the time appellant secured its license from the County Treasurer of Philadelphia County its officers and directors were all non-residents of Pennsylvania and that such information was contained in the application, verified under oath, upon which its license was issued.

The said license, having been issued in violation of an expressed legislative prohibition, was invalid and void ab initio. The action of the County Treasurer in issuing the said license was ultra vires: the acceptance of the license by the appellant was knowingly illegal, by reason whereof the appellant has been and is now engaged in business in Pennsylvania as a distributor of beer in violation of its laws, and therefore has no right to maintain this action.

When the law of a state requires as a condition precedent a license to engage in the liquor or beer business, a void license held by a person or a corporation confers no privilege upon, neither does it afford any protection to, the holder of such license.

A person is not protected from criminal prosecution by a license or permit which is void on its face as from an evident want of authority to issue.

COM. *v.* MCCORMICK, 150 Mass. 270, 22 N. E. 911.

Or where it is affirmatively shown to have been issued without compliance with the statutory requisites.

COM. *v.* ED. D. SCHWEM CO., 69 Pa. Super. 159,

U. S. *v.* MASTERS, 267 Fed. 581.

The rule that a license, regular on its face, cannot be collaterally attacked, as in an action on the bond, or in a prosecution for illegal sales, applies to cases of irregularity merely, and not where the license is issued in violation of an express legislative prohibition, as in the case of issuance to a corporation when forbidden by statute.

15 R. C. L., sec. 41, p, 287.

The wholly void action of the licensing authorities in issuing the license may be collaterally impeached.

ALLEN *v.* STATE, 181 Ala. 383, 61 S. 912.

The appellant's possession of a void license and its operation thereunder do not constitute such an interest in the subject matter as to entitle it to the relief for which it prays, or to maintain this action

Furthermore, the Pennsylvania Beverage License Law of 1935 contains a similar prohibition against the issuance of a license to non-residents, but reduces the requirement for residence in the State of officers and directors of a corporation to a period of two years prior to the application for license, and requires that fifty-one percent of the stockholders of such corporation shall have been residents of the State for a like period of two years prior to application.

The appellant, by reason of its averment that all of its officers and directors are non-residents of the Com-

monwealth of Pennsylvania, and that all of its stock is owned by the Premier-Pabst Corporation, a corporation of the State of Delaware and engaged in the manufacture of beer in Milwaukee, Wisconsin, and Peoria, Illinois, could not qualify for a license of any kind under the provisions of the Beverage License Law of 1935, or of the Act to which the said Act is an amendment.

The ownership of the appellant's stock by a manufacturer of malt or brewed beverages also violates section 28 (a) of the Malt Liquor License Law, under the provisions of which Act it holds its license. This section prohibits a manufacturer or an officer or director of any manufacturer from being at the same time, a distributor or retailer, or an officer, director or stockholder or creditor of any distributor or of any retailer, or the owner, proprietor or lessor of any place covered by any malt liquor distributor or malt liquor retail license.

The purpose of this provision, as stated in the Act, is to require a separation of the financial and business interests between the various classes of business regulated by the Act.

The term "manufacturer" as used in the said section, includes manufacturers of malt liquor within and outside the Commonwealth of Pennsylvania.

The appellant has not only willfully violated the provisions of the Act under which it applied for and accepted its beer distributor's license, but has contin-

ued in such violation, and by its action, has also violated the maxim of equity: "He who comes into equity must come with clean hands." For these reasons, it should not be permitted to maintain this action.

II.

The Right to Sell Intoxicating Liquors is Not One of the Privileges and Immunities of Citizens of the United States which the States are Forbidden to Abridge.

Liquor or beer license laws are for the protection of the community, and not for the benefit of persons engaged in the alcoholic beverage business. Their object is to restrain the traffic to the few and not to open it to all without restraint.

The right to engage in the sale of intoxicating liquors is not one of the privileges or immunities of citizens of the United States which the states are thereby forbidden to abridge, nor can such restrictive statutes be said to deprive persons of liberty or property without due process of law, nor, if not entirely arbitrary in their discrimination between persons, do they deprive anyone of the equal protection of the laws.

PHILLIPS *v.* MOBILE, 208 U. S. 472.

The validity of the exercise by a State of its police power in regulating the sale of intoxicating liquors does not in the least depend on any question as to the presence or absence of discrimination for or against particular persons or classes of persons.

The legislature may lawfully grant the right to sell to a certain class or classes of persons and withhold it from all others, and no citizen of the United States can complain because state police regulations deny him the privilege of selling intoxicating liquors, even when the privilege is accorded other citizens.

9 L. A. R., p. 780, and notes.

So long as a license law affects all persons in a state engaged in the sale of intoxicating liquor in exactly the same manner, it is not objectionable under the Federal constitution as arbitrarily taking property, or denying the equal protection of the laws

It is a question of public expediency and public morality, and not of federal law. The police power of the State is fully competent to regulate the business to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States.

GIOZZA *v.* TIERNAN, 148 U. S. 657 (1893).

It is competent for a State legislature to require that no license shall be issued to any person to sell liquor unless he be a resident of the State.

METTE *v.* MCGUCKIN, 18 Neb. 324 (1885), affirmed in 149 U. S. 781 (1892), without written opinion.

And a state statute requiring a residence for two years in the county wherein a license to sell intoxicat-

ing liquors is sought does not abridge the privileges and immunities clause.

DEGRAZIER *v.* STEPHENS, 101 Tex. 194 (1907).

The requirement of licenses is within the limits of what may constitutionally be done. Whether the public good requires the sale of intoxicating liquors is a matter for the legislature.

CROWLEY *v.* CHRISTENSEN, 137 U. S. 86.

MILLER *v.* AMMON, 147 U. S. 421.

A license for the sale of liquor is not a contract between a state or municipality granting it, and the person to whom it is issued, in any such sense as to be within the protection of constitutional guarantees.

BOSTON BEER CO. *v.* MASS., 97 U. S, 25

KESSER *v.* LYMAN, 74 Fed. 765

MORAN *v.* GOODWIN, 130 Mass. 158.

A permit (license) is in no sense a contract.

MILLSTONE *v.* YELLOWLEY, 290 Fed. 855.

It gives no vested rights such as cannot be abridged or abrogated by the legislative authority in the interest of the public.

COM. *v.* JAMES SELLERS, 130 Pa. 32

MILLSTONE *v.* YELLOWLEY, 290 Fed. 855.

PEOPLE *v.* SISSON, 220 N. Y. 387, affirmed in 180 App. Div. 464, 167 N. Y. S. 801.

Nor is it itself property or a right of property in the ordinary meaning of those terms.

KRESSER *v.* LYMAN, 74 Fed. 765.

A license to engage in the purchase and resale of malt or brewed beverages, therefore, is merely a privilege subject to the control and regulation of the State. It is submitted that the law is properly stated by the lower court in its opinion under the heading "Due Process and Equal Protection," where is says, inter alia, (R. 103, 104):

> "The traffic in intoxicating liquor is universally known to be loaded with danger to the public weal. It may be subjected to the most stringent regulation. Licenses to sell to the ultimate consumer may be limited to those who in the conduct of the business can be brought under control and supervision. The traffic is one emphatically 'fraught with a public interest'. No one can claim 'the right and privilege' to do harm to others. The regulation of the traffic by state laws, in the attempt to minimize the evils attending it, is no infringement of the rights of anyone. It is no denial of any of 'the privileges and immunities' of citizens of the United States."

DEGRAZIER *v.* STEPHENS, 101 Tex. 194, 61 A. L. R., 337, and cases cited in notes.

That the effect of some of the regulations may be to favor domestic products or citizens of the State does not in itself render a state law obnoxious to the provisions of the Fourteenth Amendment.

COX *v.* TEXAS, 202 U. S. 446

BROWN-FORMAN *v.* COMMONWEALTH, 217 U. S. 563

WAREHOUSE *v.* TOBACCO GROWERS, 276 U. S. 71

AMERICAN SUGAR *v.* LOUISIANA, 179 U. S. 89.

Residence within the state of the officers and directors of a corporate licensee is absolutely necessary for efficient enforcement of the liquor laws. It is apparent that what the appellant desires is not equal privileges with domestic corporations of Pennsylvania, but superior privileges, as its admitted ownership by the Premier-Pabst Corporation, a beer manufacturer, is prohibited by both the Malt Liquor License Law, under which its license was issued, and by Section 28 (a) of the law in question (R-69).

If, therefore, the Beverage License Law of Pennsylvania expressly or by implication restricts the privileges of selling intoxicating liquors to persons domiciled in Pennsylvania, it is nevertheless valid and binding under the authorities cited. The manner, scope and extent of the traffic in malt or brewed beverages are the subjects of legislative inquiry and control. The purpose of the act in question is the protection of the public welfare, health, peace and morals of the people of the Commonwealth of Pennsylvania. The law operates equally on all persons within the classification defined in the act.

An examination of the Beverage License Law in question shows that all of its provisions are within the police power of the state. It is wholly domestic in purview and application, and relates only to persons and property within the state to which it applies. Nothing in its language warrants the inference that

it was intended to embrace persons or property beyond the jurisdiction of legislative power, while some of its provisions could be defeated by residence without the state. It is intended for the protection and welfare of the citizens of the Commonwealth of Pennsylvania, and its enforcement for this purpose can best be attained when those who may be amenable to its penalties are wholly under the surveillance of the enforcement officers of the state.

III.

State Prohibition or Restriction of the Manufacture, Sale and Use of Intoxicating Liquors within its Limits and Diminution in the Value of Private Property Resulting therefrom is Consistent with and is not Deprivation without Due Process of Law.

Such legislation rests upon the acknowledged right of a state to control purely internal affairs, and in doing so to protect the health, morals and safety of its people. This was recognized prior to the ratification of the Fourteenth Amendment, and since then has not been questioned by this Court.

BARTEMEYER *v.* IOWA, 18 Wall. 129 (1873)

MUGLER *v.* KANSAS, 123 U. S. 623 (1887)

KIDD *v.* PEARSON, 128 U. S. 1 (1888)

CROWLEY *v.* CHRISTENSEN, 137 U. S. 86 (1890)

GIOZZA *v.* TIERNAN, 148 U. S. 657 (1893)

The force of such laws is derived from power originally belonging to the states, preserved to them by

the Tenth Amendment, and was independent of National Prohibition.

VIGLIOTTI *v.* PENNSYLVANIA, 258 U. S. 403 (1922)

Mr. Justice Holmes, in sustaining a local option statute, declared in RIPPEY *v.* TEXAS, 193 U. S. 504, 509 (1904): "* * * The state has the power to prohibit the sale of intoxicating liquors altogether, if it sees fit, MUGLER *v.* KANSAS, 123 U. S. 623, and that being so it has the power to prohibit it conditionally."

Diminution in the value of property, resulting from prohibitory enactments, is not an appropriation in the sense of eminent domain; nor is destruction of property used in violation thereof and thereby maintained as a public nuisance a deprivation of such property without due process of law.

MUGLER *v.* KANSAS, 123 U. S. 623 (1887)

KIDD *v.* PEARSON, 128 U. S. 1 (1888)

See also EILENBECKER *v.* PLYMOUTH CO., 134 U. S. 31 (1890)

The same principle was adopted by the Court in denying that the use or disposition of property by Congress under the War Time Prohibition and National Prohibition Acts, resulting in hardship and loss to the owners thereof, was arbitrary and unreasonable.

HAMILTON *v.* KENTUCKY DISTILLERIES CO., 251 U. S. 146 (1919)

RUPPERT *v.* CAFFEY, 251 U. S. 264 (1920)

State prohibition may prohibit and punish possession of intoxicating liquors for personal use, in the course of due process of law.

CRANE *v.* CAMPBELL, 245 U. S. 304 (1917)

IV.

The Separate Classification of a Distributor and an Importing Distributor Prescribed by the Statute in Question is neither Discriminatory nor Unreasonable.

The proposition that reasonable classifications of persons and businesses is not a denial of equal protection under the Fourteenth Amendment is so fundamental that no attempt will be made to support it with authority. It is enough if there is no discrimination in favor of one as against another of the same class, and due process of law within the meaning of the Fourteenth Amendment is secured if the law operates on all alike and does not constitute an arbitrary exercise of state power.

The statute under construction actually confers greater privileges upon the importing distributor. The distributor is prohibited from importing beer and purchasing domestic beer from another distributor, but may purchase both imported and domestic beer from the importing distributor, who is unrestricted in the purchase of beer either foreign or domestic.

The distributor may not sell to another distributor, but sales by an importing distributor are unrestricted. This is a substantial difference. The distributor, un-

der the previous law, who was engaged in importing malt or brewed beverages, may continue to import such beverages provided he applies for and secures an importing distributor's license from the Pennsylvania Liquor Control Board and pays the increased fee therefor, less a credit for the unused portion of the fee paid for the previous license.

The appellant lays great stress upon the amount of the license fee required by the act to be paid by the importing distributor, and because this fee is larger than that required of a distributor, it contends the act discriminates in favor of domestic and against foreign beer.

The Beverage License Law applies to all persons in the State of Pennsylvania engaged in the sale of malt or brewed beverages in exactly the same manner, and the classification applies equally to those engaged in the sale of both domestic and foreign beer. The higher license fee required of the importing distributor is due to the greater privileges he enjoys under his license. The classification is natural and reasonable. The increased license fee for both distributor and importing distributor is only incidental to the main purpose of the act, viz: regulation and restraint of the traffic in malt and brewed beverages.

The license fee for each class of distributor is neither prohibitive nor discriminatory, but reasonable and proper for the privileges received.

In passing, it is interesting to note that a statute providing for a tax on sellers of liquors, but stipulat-

ing that it "shall not apply to wines produced from grapes grown in this state while in hands of producers or manufacturers thereof" was held not discriminatory in the absence of the fact of interstate commerce.

Cox *v.* Texas, 202 U. S. 446 (1906)

A recapitulation of all three preceding points of argument would be necessary to fix the standard of reasonableness applicable to the case at bar. In brief, it is submitted that since the enactment of the Webb-Kenyon Act and the ratification of the Tweny-First Amendment, the justification for a regulation and restriction of the traffic in intoxicating beverages under the Fourteenth Amendment will satisfy the standard without reference to the law of interstate commerce. Complainant has no recourse to the privileges and immunities clause on account of requirements of residence within the state, nor to the Fourteenth Amendment on account of hardship or loss. And the separate classification of a distributor and an importing distributor is neither a denial of equal protection nor of due process of law.

The statute in question is a police measure and like its progenitor, the Brooks High License Law Pennsylvania Act of May 13, 1887, P. L. 108, it was not written for the express or prime purpose of deriving revenue from licensing the sale and regulating the use of intoxicating beverages.

Like Congress under the Eighteenth Amendment, the states under the Twenty-First Amendment have far-reaching powers. By virtue of the Eighteenth

Amendment, Congress had successfully passed legislation which in terms exceeded the actual language of the amendment. The manufacture, sale and transportation of nonintoxicating beverages was prohibited: NATIONAL PROHIBITION CASES, 253 U. S. 350 (1920); local manufacture of denatured alcohol not intended for and unfit for beverage purposes was regulated: SALZMAN *v.* UNITED STATES, 268 U. S. 466 (1925); physicians were prevented from prescribing intoxicating malt liquors for their patients: EVERARDS' BREWERIES *v.* DAY, 265 U. S. 545, 560 (1924); and severely restricted in the prescription of spirits to their patients: LAMBERT *v.* YELLOWLEY, 272 U. S. 581, 593 (1926).

In the last two decisions cited, the Court referred to the settled rule that where the means adopted by Congress in exerting an express power are calculated to effect its purpose, it is not admissible for the judiciary to inquire into the degree of their necessity. And this Court, in considering a statute designed to protect game within the state, declared in SILZ *v.* HASTERBERG, 211 U. S. 31, 40 (1908):

> "* * * subject to constitutional limitations, the legislature of the State is authorized to pass measures for the protection of the people of the State in the exercise of the police power, and, is itself the judge of the necessity or expediency of the means adopted."

V.

The Efficacy of State Regulation and Restraint of Traffic in Intoxicating Liquors is Guaranteed by the Twenty-First Amendment to the Constitution of the United States, without Qualification by the Law of Interstate Commerce.

Assuming, for the purposes of argument, the premise that there is here involved (1) commerce, (2) interstate in its nature, and (3) a regulation thereof in fact, a proper question is raised under the commerce clause of the Constitution, which normally imposes a special limitation on the power of the states. But the completeness of the divestment of the interstate character of intoxicating beverages under the Twenty-First Amendment to the Constitution of the United States may be demonstrated by an examination of the character of the regulation and the trend of the law regulating intoxicating liquors prior to the ratification thereof.

The Wilson Act. After the period of local self-government and state rights in the matter of the control of intoxicating liquors (LICENSE CASES, 5 How. 504 (1847)) had been cut short by decisions of this Court, (BOWMAN *v.* CHICAGO and N. W. RY. Co., 125 U. S. 465 (1888) and LEISY *v.* HARDIN, 135 U. S. 100 (1890)) Congress attempted to restore state control by the passage of the Wilson Act, August 8, 1890, c. 728, 26 Stat. 313, entitled "An act to limit the effect of the regulation of commerce between the several States and with foreign countries in certain cases,"[11] which provided:

> "That all fermented, distilled, or other intoxicating liquors or liquids transported into any

> State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been purchased in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." Sustained in RE RAHRER, 140 U. S. 545 (1891).

But, due to the use in the Wilson Act of the words "upon arrival," this Court persistently postponed the effectiveness of state regulation until actual delivery to the consignee, that is, the right to receive liquor was unaffected, thereby giving effect to the law of interstate commerce in certain cases.

> RHODES *v.* IOWA, 170 U. S. 412 (1898)
>
> AMERICAN EXPRESS CO. *v.* IOWA, 196 U. S. 133 (1905)
>
> HEYMAN *v.* SOUTHERN RY. CO., 203 U. S. 270 (1906)
>
> ADAMS EXPRESS CO. *v.* KENTUCKY, 206 U. S. 129 (1907)
>
> LOUIS. AND NASH. R. R. *v.* COOK BREWING CO., 223 U. S. 70 (1912)
>
> KIRMEYER *v.* KANSAS, 236 U. S. 568 (1915)
>
> ROSENBERGER *v.* PACIFIC EXPRESS CO., 241 U. S. 48 (1916)

The Wilson Act gave a state no authority to restrict the power of importation to a state commission so as

to have the effect of discrimination against sales in interstate commerce negotiated directly by its citizens: SCOTT *v.* DONALD, 165 U. S. 58 (1897); and in this respect the Beverage License Law of the Commonwealth of Pennsylvania is not offensive. Further, under the Wilson Act, sales in interstate commerce negotiated directly by residents of the state, could not be subjected to conditions: VANCE *v.* VANDERCOOK CO., 170 U. S. 438 (1898), although the state law in this case, revamped after the former decision, was held not discriminative against interstate commerce simply because it gave to state authorities an exclusive right to purchase all liquor sold within the state so long as it did not attempt to restrict the direct interstate purchases of its citizens.

On the other hand, the power of the state attached before sale of intoxicating liquors, under the Wilson Act, thereby giving effect to non-discriminatory state license taxes for the privilege of the sale thereof or of engaging in the business of a dealer therein, even when applied to non-residents.

REYMANN BREWING CO. *v.* BRISTER, 179 U. S. 445 (1900)

FOPPIANO *v.* SPEED, 199 U. S. 501 (1905)

PHILLIPS *v.* MOBILE, 208 U. S. 472 (1908)

DEBARY *v.* LOUISIANA, 227 U. S. 108 (1913)

The Wilson Act was held to validate a state statute requiring a license for salesmen soliciting orders for sales of liquor shipped in interstate commerce, thereby giving precedence to the state regulation over

the usual limitations of the commerce clause, as clearly pointed out in the case of DELAMATER *v.* S. DAKOTA, 205 U. S. 93, 97-99 (1907), where the Court said:

> "The general power of the states to control and regulate the business of dealing in or soliciting proposals within their borders for the purchase of intoxicating liquors is beyond question. * * * It is settled by a line of decisions of this Court. noted in the margin (at p. 98), that the purpose of the Wilson Act, as a regulation by Congress of interstate commerce, was to allow the states, as to intoxicating liquors, when the subject of such commerce, to exert ampler power than could have been exercised before the enactment of the statute. In other words, that Congress, sedulous to prevent its exclusive right to regulate commerce from interfering with the power of the states over intoxicating liquor, by the Wilson Act adopted a special rule enabling the states to extend their authority as to such liquor shipped from other states before it became mingled with the mass of other property in the state by a sale in the original package. * * * (The Wilson Act) manifested the conviction of Congress that control by the states over the traffic of dealing in liquor within their borders was of such importance that it was wise to adopt a special regulation of interstate commerce on the subject. When, then, for the carrying out of this purpose the regulation expressly provided that intoxicating liquor coming into a state should be as completely under the control of a state as if the liquor had

been manufactured therein, it would be, we think, a disregard of the purpose of Congress to hold that the owner of intoxicating liquors in one state can by virtue of the commerce clause go himself or send his agent into such other state, there in defiance of the law of the state, to carry on the business of soliciting proposals for the purchase of intoxicating liquors."

This case is noteworthy and expressly concedes a different treatment of the traffic in intoxicating beverages. Mr. Justice White definitely refused to consider decisions which concerned only the power of a state to deal with articles of interstate commerce other than intoxicating liquors, or which, if concerning intoxicating liquors, related to controversies originating before the enactment of the Wilson Act.

Also under the Wilson Act, a state inspection law was held to be valid, even though the inspection fee was out of proportion (by 30 times) to the cost of inspection and the inspection itself was inadequate as a protection against fraud or impurity. Further, the Supreme Court held immaterial the fact that the operation of the state law was or might be such as to deter importations into the state. And finally, the Court refused to review the determination of the state court that the statute was not a revenue but a police measure.

PABST BREWING CO. *v.* CRENSHAW, 198 U. S. 17, 26 (1905)

"Conceding that the law in question may be inadequate to accomplish the purpose designed and produces a large revenue to the state over and

above the cost of inspection, this affords no Federal ground upon which to hold that the police power of the state was not brought into play in making the enactment where the law does not operate upon a subject within the Federal control. This becomes evident when it is borne in mind that, whether the statute be regarded as a prohibition, as a regulation, as a license, or as an inspection law, if it encroached upon the Federal authority it would be void, and, on the contrary, in all or any of these aspects the law would be valid, so far as the Federal Constitution is concerned, if it did not so encroach. The purpose of the Wilson Act was to make liquor after its arrival a domestic product and to confer power upon the states to deal with it accordingly. The police power is hence to be measured by the right of a state to control or regulate domestic products, a state and not a Federal question as respects the commerce clause of the Constitution. So far as the state aspect is concerned, the matter is foreclosed by a decision of the Supreme Court of Missouri passing upon the validity, under the state constitution of the law now under consideration."

The results in this case are significant in view of the general contemporary doctrines, urged upon the Court, (1) that interstate commerce is unconstitutionally burdened by a state tax, termed an inspection charge, resulting in receipts largely in excess of the amount required to pay the cost of inspection, and (2) that the Supreme Court will not hold itself bound by the definition of the tax as declared by the state,

but will be guided by its practical operation and effect as applied and enforced. The latter principle has no application to the traffic in intoxicating beverages:

PABST BREWING CO. *v.* CRENSHAW, 198 U. S. 17 (1905), followed in DELAMATER *v.* S. DAKOTA, 205 U. S. 93 (1907)

Finally, under the Wilson Act, there is a suggestion in the decisions that the states could not discriminate against interstate shipments of intoxicating liquors. The warning is confined to dicta.

SCOTT *v.* DONALD, 165 U. S. 58, 100 (1897)

REYMANN BREWING CO. *v.* BRISTER, 179 U. S. 445 (1900)

PHILLIPS *v.* MOBILE, 208 U. S. 472, 480 (1908)

But before the passage of the Wilson Act, there was a clear cut case forbidding discrimination:

WALLING *v.* MICHIGAN, 116 U. S. 446 (1888)

It is submitted, however, that none of these cases deserves recognition as controlling authority for the simple reason that state regulation did not attach before delivery to the consignee, under the Wilson Act, by the very terms of which there always remained a zone of protection under the commerce clause.

The Webb-Kenyon Act. In the face of an adverse opinion by the Attorney General and over President Taft's veto, Congress passed the Webb-Kenyon Act, March 1, 1913, c. 90, 37 Stat. 699, entitled "An act divesting intoxicating liquors of their interstate character in certain cases," which provided:

"That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented or other intoxicating liquor of any kind, from one State, Territory or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited." Sustained,

CLARK DISTILLING CO. *v.* WESTERN MD. RY. CO., 242 U. S. 311 (1917)

The act was an extension of the Wilson Act and the purpose was to prevent the immunity characteristic of interstate commerce from being used to permit the receipt of liquor through such commerce in states contrary to their laws, and thus by subterfuge and indirection to set such laws at naught: ID.

Before the assaults of the liquor interests were circumscribed by the interim of national prohibition,

Congress had further enacted the so-called "Reed Amendment," March 3, 1917, c. 162, 39 Stat. 1058, 1069, making punishable the order, purchase or transportation of liquor in interstate commerce except for certain purposes, into any State or Territory in which the manufacture or sale thereof was prohibited. Sustained,

UNITED STATES *v.* HILL, 248 U. S. 420 (1919)

WILLIAMS *v.* UNITED STATES, 255 U. S. 336 (1921).

And C. O. D. transactions in violation of state and Federal regulations were made punishable under the Criminal Code of the United States, c. 321, 35 Stat. 1136. Sustained,

DANCIGER *v.* COOLEY, 248 U. S. 319 (1919)

Both the Wilson Act and the Webb-Kenyon Act were omitted from the Code as superseded by the National Prohibition Act, October 28, 1919, c. 85, 41 Stat. 305, but the Supreme Court held that the Webb-Kenyon Act had not been repealed by the Eighteenth Amendment nor by the National Prohibition Act:

MCCORMICK AND CO. *v.* BROWN, 286 U. S. 131 (1932)

The Webb-Kenyon Act and the "Reed Amendment" have been substantially re-enacted, March 22, 1933, c. 4, 48 Stat. 16.

Because of the Eighteenth Amendment, effective January 16, 1920, and repealed by ratification of the

Twenty-First Amendment, December 5, 1933, the decisions under the Webb-Kenyon Act are few in number. The first actual controversy under the Act involved a shipment of whiskey, intended for personal use of the consignee, who had ordered by mail and had no intention of disposing of it contrary to the law of the state, and delivered into a local option territory in which the sale alone was prohibited. In holding that the Webb-Kenyon Act had no application and that rights under the commerce clause were denied by a conviction on these facts, the Court advanced the solution of the case at bar not one bit. Such a holding, that the law of interstate commerce may be applicable to an interstate zone unaffected by state regulation does not preclude the effectiveness of that law when the state rule purports to affect the interstate zone. The case was,

> ADAMS EXPRESS CO. *v.* KENTUCKY, 238 U. S. 190 (1915).

Under the Webb-Kenyon Act, a state is empowered to require carriers to keep records of interstate shipments of liquor open for inspection to any officer or citizen:

> SEABOARD AIR LINE RY. *v.* N. CAROLINA, 245 U. S. 298 (1917).

And a state may limit the amount of liquor which any person, other than a common carrier, is permitted to bring into a state at one time, and then only under a permit especially issued for such interstate shipment, conspicuously affixed to each package, and required to be cancelled by the carrier, without which

it is made unlawful for the carrier knowingly to transport the same:

> RAINIER BREWING CO. *v.* GREAT N. PAC. SS. CO., 259 U. S. 150, 154 (1922).
>
> "* * * the purpose of the legislation was to make the transportation of intoxicating liquors in the State of Washington as difficult, conspicuous and expensive as possible. Only an individual could qualify to ship or receive it and it was intended that it should move only in a single package of strictly limited quantity, with a permit attached, etc. * * *"

and during national prohibition a state license fee imposed upon all manufacturers and wholesale dealers shipping medicinal and other alcoholic preparations into the state was upheld:

> MCCORMICK & CO. *v.* BROWN, 286 U. S. 131 (1932).

The Twenty-First Amendment. Up to this point, the immunities of intoxicating liquor in interstate commerce had been removed by the regulation of interstate commerce by Congress itself:

> IN RE RAHRER, 140 U. S. 545 (1891).
>
> CLARK DISTILLING CO. *v.* WESTERN MD. RY. CO., 242 U. S. 311 (1917).

Then, all that was sought to be remedied by the Webb-Kenyon Act was incorporated in the Constitution of the United States, Twenty-First Amendment thereto, providing in section 2 thereof:

> "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

This section was intended to guarantee by Constitutional sanction state powers for which the Congressional sanction had been sustained only by a divided Court. See report of Senator Blaine, from the Committee on the Judiciary, on Section 2 of original Senate Joint Resolution 211 and not of the Amendment.

> CONGRESSIONAL RECORD—SENATE, Vol. 76, pp. 4140-4144.

VI.

The Statute in Question was enacted in the Exercise of the Police Power of the State to Regulate and Restrain the Traffic in Malt and Brewed Beverages. All of its Provisions are Reasonable and Germane to the Subject Expressed in the Title and Essential to Properly Control said Traffic.

The cases cited in the appellant's brief, other than those involving intoxicating liquor, are not pertinent to the inquiry here, as the commodities there under consideration were fully protected by the commerce clause. Practically in the same class are the liquor cases decided prior to the enactment of the Webb-Kenyon Act, and the adoption of the Twenty-First Amendment, where the protection of interstate commerce had been removed from an interstate shipment of liquor only upon its arrival in the state to which consigned.

The appellant, on page 40 of its brief, concedes that the Webb-Kenyon Act prohibits the introduction into a state of intoxicating liquors in violation of the laws of the state, but argues that it is equally certain that a statute of a state is not to be accepted as the law of the state, if, in its passage, the legislature exceeded the limitations upon its power as expressed in the United States Constitution: Wherein has the Legislature of Pennsylvania exceeded its power? Is not the purpose of the Twenty-First Amendment the protection of the respective states in their effort to regulate and restrain the traffic in intoxicating liquor? It is conceded that the Twenty-First Amendment does not remove from intoxicating liquors the protection of interstate commerce, in the absence of any prohibitory legislation by a state, but when a state has acted and, under its police power, prohibits the transportation or importation of such liquors for delivery or use therein, except in accordance with the provisions of its liquor laws; then the Twenty-First Amendment also prohibits it.

The court below has so clearly stated this principle of law that we quote from its opinion (R-102):

> "As the law now is, the measure of control which the states may exercise is determined by the states themselves. If the importation of intoxicating liquor is acceptable to a state, it retains its status as the legitimate subject of interstate commerce, but if it is forbidden importation by the state, the laws of the United States likewise forbid it. Interstate commerce is spoken of under the figure of a stream whose free flow cannot be interrupted

> by any state law. Any state may however remove intoxicating liquor as a subject of interstate commerce. When it does so by passing a law on the subject of its importation, the law of the United States forbids its further importation if in violation of the laws of the state. Such is now the law and that the law was once otherwise goes for naught."

Surely it was not intended that the Twenty-First Amendment should apply only to so-called "dry states", as the language, used in said amendment, is clear and unambiguous. If there was any intention that its operation should be limited, it would have so stated. In the absence of any limitation, the said amendment must be construed to apply to all states, whether prohibiting entirely the traffic in intoxicating liquors or regulating and restraining such traffic.

There are but few decisions of the Courts subsequent to the adoption of the Twenty-First Amendment, in which that amendment has been considered. Some are relied upon by the appellant as sustaining its contention that the Pennsylvania Beverage License Law is unconstitutional. While we do not agree with the decisions in said cases, they are clearly distinguishable from the instant case. In JOSEPH TRINER CORPORATION *v.* ARUNDEL et al., 11 Fed. Sup. 145, 146, 147, a three-judge United States District Court, in an opinion filed June 29, 1935, held a statute of the State of Minnesota invalid, as being in violation of the equal protection clause, which prohibited the sale of liquor imported into the state in a finished condition unless the

brand of such liquor had been registered in the United States Patent Office, and which statute imposed no similar restriction with respect to liquor manufactured in that state.

The Court said, inter alia:

> "We are unable to see any justification for making a distinction between those who are permitted to manufacture or process liquor within the state and those who are permitted to import liquor into the state, with respect to the use of registered or unregistered brands. If the registration of brands of liquor in the Patent Office has, as is contended, some tendency to protect the public from misbranded liquor or to place responsibility for liquor sold within the state, there seems no logical reason for making the law apply only to those who import the finished product."

The Court also says:

> "The purpose of the provision (Twenty-First Amendment) referred to was to make it impossible for Congress to permit the transportation or importation into any state, territory, or possession of the United States of intoxicating liquors in violation of the laws of the state, territory, or possession. In other words, the provision left the states, territories, and possessions free to determine to what extent, if at all, intoxicating liquor should be a lawful subject of commerce within their limits."

Notwithstanding this statement of the purpose of the Constitutional Amendment, the Court finds that if the act discriminates against imported liquor, it is invalid, unless the discrimination is justified, because of some real and substantial difference having a reasonable relation to the subject of the particular legislation.

Is the Pennsylvania act subject to the same objection when it requires that all licensees be residents of the state for a period of two years, so that such licensees and its officers and directors may be amenable to its laws in the event of violation thereof? Or when it classifies licensees and exacts a larger license fee from the class that enjoys greater privileges, with respect to both domestic and imported beer?

Surely it is not, as the test of reasonableness, fixed by the Court in this and the following case, is fully met.

A similar case is that of YOUNG'S MARKET CO. *v.* STATE BOARD OF EQUALIZATION, 12 Fed. Sup. 140. There a three-judge United States District Court, in an opinion filed September 21, 1935, held a statute of the State of California invalid, as being in violation of the commerce and equal protection clauses of the Constitution, which required a person who engages in business as a "wholesaler" of beer manufactured in California to pay only a $50.00 license tax for each establishment maintained by him in said state for that purpose, but required a competing "wholesaler" of beer which he imports into said state to pay in addition to a like charge a further license tax of $500.00 for each

establishment maintained by him for the receipt and possession of such imported beer.

The Court adopted the interpretation placed upon the Twenty-First Amendment in the Minnesota case, supra, and quoted extensively from the decision filed therein.

It will be noted that in each of the foregoing cases, the complainants had fully complied with the laws of the respective states under which they secured the requisite licenses to engage in business. In the instant case, the complainant not only holds a void license to engage in business, but is and has been violating the interlocking business prohibition of the Pennsylvania law hereinbefore mentioned.

Another unreported case recently decided (February 28, 1936) by a three-judge United States District Court, (Western District, Southern Division) in the State of Washington, wherein the Twenty-First Amendment was considered, is that of PACIFIC FRUIT & PRODUCE COMPANY *v.* MARTIN et al. There a statute of the State of Washington required that out of state brewers and beer wholesalers, whose products are sold by licensees in the state, be themselves licensed. The Washington State Liquor Control Board threatened to revoke the license of complainant, who was licensed by said board, unless it ceased to handle foreign beer manufactured by a foreign brewery that refused to take out the state license required by the statute. The court held the particular provision of the act discriminated against foreign beer and violated both the

commerce clause and the Fourteenth Amendment. This decision cites with approval the case of YOUNG'S MARKET CO. *v.* STATE BOARD OF EQUALIZATION, supra, and states that if the decision of Pennsylvania District Court in the instant case is opposed to any of the conclusions reached by it, they nevertheless so hold. It is submitted that this case is not pertinent, as the Washington statute attempted to punish a resident licensee handling foreign beer because the non-resident manufacturer did not secure a license in the State of Washington.

On the other hand, in a recent case, GENERAL SALES AND LIQUOR COMPANY *v.* BECKER, et al., decided February 10, 1936, not yet reported, involving an interpretation of the Twenty-First Amendment, a three-judge United States District Court of Missouri, (Eastern District), held a statute of that state valid and not in violation of either the commerce or equal protection clauses of the Constitution of the United States, which required a non-resident wholesaler of intoxicating liquor to pay the same license fee as a resident wholesaler of Missouri, to wit, $500.00, in order to sell such liquor in said state, but prohibited such non-resident wholesaler from selling directly to a retail liquor dealer therein, although it permitted such sales by a resident wholesaler.

The court there reviews the decisions under the Webb-Kenyon Act, refers to the case of JOSEPH TRINER CORP. *v.* ARUNDEL, supra, and the Twenty-First Amendment, then says inter alia, under the heading "Equal Protection Clause of the Fourteenth Amendment":

"The equal protection clause does not prevent the State from making classifications of persons in the enactment of laws under the police power, but permits wide discretion in that regard, and avoids what is done only when it is without any reasonable basis, and purely arbitrary. Even in the absence of proof, if any state of facts can reasonably be conceived that would sustain the classification, the existence of that state of facts will be assumed. The burden is on the party who assails the classification to show that it is arbitrary."

The court also says in speaking of the classification of wholesalers under the act:

"To this end, and possibly for other reasons, the State has limited the sales of liquor made by non-residents to sales made to wholesale dealers in this State, or to retail dealers, when the transaction is made through such wholesale dealers. The wholesale dealer is by the Act made the agent of the non-resident whose transaction he handles.

"In this manner the State has undertaken to supervise and regulate the sale of liquor in this State by non-residents. If it is a fact, as it seems to be, that resident wholesalers enjoy privileges withheld from non-resident dealers, there is a perfectly obvious basis therefor. The classification made of dealers entitled to sell liquor to retailers in this State is a reasonable one, and not a mere arbitrary grouping of them, for the purpose of conferring some advantage to a particular class. The Missouri statute does not deny plaintiff any privilege granted it by the Equal Protection Clause."

The classification of distributor and importing distributor under the Pennsylvania Beverage License

Law is, for the reasons hereinbefore stated, both reasonable and bona fide, and not a mere arbitrary grouping in order to discriminate either against the importation of foreign beer or a non-resident dealer therein.

The most recent case, involving the Twenty-First Amendment, is PHILIP BLUM AND COMPANY, INC. et al. *v.* HENRY et al., decided by a three-judge United States District Court of Wisconsin (Eastern District) on March 28, 1936, upholding the constitutionality of a law of the State of Wisconsin dealing with the subject of intoxicating liquors which required a foreign corporation to secure a permit and to pay a permit fee of $500.00 per year and obtain a permit for each of its salesmen at $10.00 per year, but were not permitted to sell to retailers in Wisconsin, whereas a resident of Wisconsin, by paying a fee of $500.00 may also sell to retailers. The permit fee had been increased from $1.00 to $500.00.

The court in its opinion said, inter alia:

> "At the threshold of the application it is necessary to consider the interpretation and scope of the Twenty-First Amendment to the Constitution adopted concurrently with the repeal of the Eighteenth Amendment. It reads: 'Section 2. The transportation or importation into any state, territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.'
>
> "The essence of this amendment is prohibition—not of intoxicating liquors—but of (1) transportation or importation (2) into any state (3) for delivery, or (4) use therein of (5) intoxicating liquors, (6) in violation of the laws thereof—

i. e., any state. In other words, it deals solely with the subject of transportation or importation into any state and while the 18th Amendment comprehensively forbade manufacture, transportation and sale, and to that extent was a prohibition amendment, the Twenty-First Amendment is limited to a prohibition upon transportation or importation into any state, when such transportation or importation, being subjected to the test of the laws of a state, is in violation thereof. The latter is the condition upon which prohibition of transportation for delivery or use must be tested. Regardless of any views entertained respecting the Webb-Kenyon or the Wilson Acts which, prior to the Eighteenth Amendment, sought to deal with this subject matter, the Twenty-First Amendment by its very language, intended or intends to interdict, as we assume, transportation of any and all kinds, when intoxicating liquor is the subject thereof, in defiance of state interdiction. * * *

"The query is at once prompted, can it be possible that the language of the amendment may be so ignored that Congress may still regulate interstate commerce in intoxicating liquor, by authorizing transportation into any state, notwithstanding interdiction by the State? Or that it must be held, notwithstanding the amendment, that the right to transport intoxicating liquors into any state is guaranteed by other articles of the national Constitution as a 'privilege or immunity' of a citizen of the United States; or to 'citizens of the several states: or' is a guaranteed protection of equal laws? We regard these contentions as repugnant to the plain words of the articles. * * *

"If the amendment be interpreted to reserve to the national government full power of review or

surveillance over the states in the exercise of their powers, the plain intent respecting state power, must fail. * * *

"We are also of opinion that the criticism of the laws in question respecting their revenue rather than a police regulatory aspect, does not bear relevantly upon the right or scope, or character of classification. The accomplishment of either objective may necessitate what, within the terms of the amendment, are declared to be violations in respect of transportation or importation."

Both the reasoning and the decision of court in the preceding case, are in accord with that of the lower court in the instant case. However, if this Court should find that the lower court's interpretation of the Twenty-First Amendment is too broad, and that the provisions of a state statute must be reasonable and not discriminatory against foreign beer, then we submit that the Pennsylvania Beverage License Law fully meets such requirements.

VII.

Effect of Severability Clause of the Statute.

Appellant argues (Appellant's Brief, pages 58-59) that if this court should find its contention that the provisions relating to importing distributors are not constitutional, then the entire act which is a regulatory act on the entire traffic in malt or brewed beverages, must fall. This in spite of the severability clause in the act. It cites as authority for its contention (Appellant's Brief, pages 57-58) Railroad Re-

tirement Board *v.* Alton Railway Company 295 U. S. 330 (361).

We cannot see that the citation is in point, particularly in view of the concluding portion of the citation which is as follows:

> "In this view we are confirmed by the petitioners argument that as to some of the features which we hold unenforceable, it is 'unthinkable' and 'impossible' that the Congress would have created the compulsory pension system without them. They so affect the dominant aim of the whole statute as to carry it down with them."

Appellee in this case not only does not concede but definitely denies that the dominant purpose of the act in question was to regulate only the distribution of malt or brewed beverages by the classes of licensees designated as importing distributors or distributors. On the contrary, appellee contends that the dominant purpose of the act is to regulate and restrain the traffic in malt, brewed and vinous and fruit juice beverages. The classification of licenses is merely an incident of the main purpose, regulation and restraint.

Section 4 of the said Act (R. 45) is as follows:

> "Sales not for consumption on the Premises.—It shall be unlawful for any person to sell to another, except as herein otherwise provided in the case of retail dispensers or as may be otherwise authorized by law, any malt or brewed beverages not for consumption upon the premises where sold, unless such person holds a valid license issued under this act permitting such sale."

No place in this entire proceeding has appellant attacked the foregoing section of the Act in controversy, except as the portion of its argument (Appellant's Brief, page 59) referred to above, might be so construed.

The entire act, as has been stated, is intended to regulate and restrict, and since the licensing features of the act are in themselves severable it is unthinkable that it should be contended that because one minor feature of an act dealing with a paramount right of a state, should be invalid, the citizens of that state should be subjected to the evils of an unfettered and uncontrolled debauching of its people by vendors of an article as to which the state has pointedly stated its purpose to regulate and restrict.

Appellant also loses sight of the fact that the act which it attacks is but an amendment to the very act under which it asserts its right to contest the validity of the instant act. We urge that it is academic that the beneficiary of an act of assembly cannot be heard to contest its validity. If the instant act should be found to be invalid, in part, the act which it amends would be reinstated as substantive law.

The original act of the Commonwealth of Pennsylvania, amended by the act in controversy, is not under attack in this proceeding. Under that said original act (Act of May 3, 1933, P. L. 252, as amended) appellant herein could not qualify as a licensee, by reason of the non-residence of its officers and directors.

CONCLUSION

(1) The creation of two classes of distributors is a reasonable classification under the police power.

(2) The classification of the two types of distributor is based upon a substantial difference in privilege.

(3) The description of the two classes of distributors in Appellant's Brief, page 31, is appellant's conception of the act and not the definition of the act.

(4) The whole act is a reasonable exercise of the right of the Commonwealth of Pennsylvania to regulate and restrict the traffic in malt or brewed beverages.

(5) The Twenty-First Amendment removes from intoxicants the protection afforded other articles of commerce in interstate commerce.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 745.—October Term, 1935.

Premier-Pabst Sales Company, Appellant, *vs.* Walter T. Grosscup, et al.	Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

[May 18, 1936.]

Mr. Justice Brandeis delivered the opinion of the Court.

Premier-Pabst Sales Company, a Delaware corporation, is a distributor of beer made in Illinois and Wisconsin. Having secured a license issued under a statute of Pennsylvania enacted and amended in 1933, it engaged in business there. That statute was again amended by Act No. 398, approved July 18, 1935, which changed the licensing law so as to discriminate between distributors who sold beer made within the State and those who sold imported beer. The annual license fee of the former was made $400, and the penalty of the bond required of them was set at $1,000; the license fee of the latter was made $900, and the penalty of the bond to be given by them was set at $2,000.

The Company did not apply for a license under the 1935 Act. Instead, it filed, in the federal court for eastern Pennsylvania, this suit against the Liquor Control Board and other state officials. Claiming that the Act violated the commerce clause and the equal protection clause of the Federal Constitution, the bill prayed for a judgment declaring the Act void and for an injunction restraining its enforcement. The case was heard before three judges upon application for a preliminary injunction. The facts were stipulated; and it was agreed that the hearing should be deemed also a a final hearing upon the application for a permanent injunction. The court denied the injunctions and dismissed the bill as wanting in equity, because the discrimination complained of was authorized by the Twenty-first Amendment. — Fed. Supp. —. An appeal was allowed.

We have no occasion to consider the constitutional question, because it appears that the plaintiff is without standing to present it.

One who would strike down a state statute as obnoxious to the Federal Constitution must show that the alleged unconstitutional feature injures him. *Heald* v. *District of Columbia*, 259 U. S. 114, 123. Under the Act of 1935, no one may sell beer in Pennsylvania unless duly licensed; and no license may issue to a corporation unless all its officers and directors, and fifty-one per cent of its stockholders, have been residents of the State for the period of at least two years prior to the application for a license. The constitutional validity of that provision is conceded; and it was agreed that all the officers and directors are, and were when the suit was begun, non-residents of Pennsylvania, and that all of its stock was, and is, held by another foreign corporation. As no license could legally issue to the Company in any event, it cannot be injured by the alleged unconstitutional discrimination; and hence has no standing to challenge provisions of the Act.

The Company urges that it has a standing because, if the 1935 Act is invalid, the license issued under the Act of 1933 as amended is still in force. The 1933 Act, also prohibited the issue of a license to a corporation whose officers and directors are non-residents. The Commonwealth insists that the Company's officers and directors were non-residents when it secured its license. The stipulation as to the facts is silent on the subject; and the Company argues that we must assume, in favor of the validity of the license, that it was then qualified to receive one. We need not discuss the validity of that contention. For even if the license was valid when issued, the State had the power to terminate it. *Mugler* v. *Kansas*, 123 U. S. 623. And, as we construe the Act of 1935, it did so.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.